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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 506

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR,

Petitioner,

vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 506

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR,

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vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR respectfully shows this Honorable Court:

A.

Summary Statement of the Matter Involved, With Questions Presented.

The Circuit Court of Appeals sustained the decision of the District Court, dismissing petitioner's amended complaint, because it failed to state a claim upon which relief

could be granted (119 F. (2d) 509; R. 85-98). The suit was one to enforce an award of the Second Division of the National Railroad Adjustment Board, that ordered the respondent to reinstate various of its shop craft employees, with pay for time lost, by reason of respondent's violation of seniority rules created by a contract of 1929, and/or by posted Rules of 1931 (R. 6-7, and 29-37).

As reasons for its action, the court stated that: (a) the Board was without jurisdiction, in that the employees had failed to reduce their claim to a "case" before some tribunal prior to June 21st, 1934 (119 F. (2d) 514; R. 94); (b) the award was too vague and uncertain, apparently because it required the parties to the dispute to check and name the employees entitled to relief (clearly a matter of record) (119 F. (2d) 514; R. 92-93); and (c) in any event, the charges of the complaint showed an abrogation of the 1929 contract, and that the complaining employees were not entitled to the benefits of the 1931 rules; that there was no claim made for damages arising out of the breach of the 1929 contract prior to its abrogation (119 F. (2d) 515; R. 97).

Believing the court misconceived the factual allegations, as well as the law, we summarize the averments of the complaint, refuting the court's conclusions in inverse order:

(c) By a collective bargaining contract of August 1st, 1929, respondent agreed to reduce and increase its forces in the order of the seniority of its employees (R. 13, 14, 36). It sought abrogation and revision of this contract (R. 14), and, after refusing to arbitrate, posted rules on February 9, 1931 to govern employment in its shops, which rules carried forward the identical seniority provisions of the 1929 pact (R. 15, 36). On September 1st, 1931, a bulletin signed by a subordinate foreman of respondent was

posted in its shops (R. 15). This instrument was addressed only to carmen, and their helpers, and contained a list of their names in order of seniority, as well as a statement that the seniority of "former employees" who had not worked under their classification in any twelve-month period "would be dropped" (R. 15). It was pointedly pleaded that both the notice seeking abrogation of the 1929 contract (R. 14, 16-17), and the abortive bulletin (R. 15-16) were insufficient to comply with the requirements of the Railway Labor Act of 1926 (45 U. S. C. A., para. 146, Sec. 6) as to notification and opportunity for conference before change of agreements. In fact, Respondent apparently conceded the invalidity of the bulletin, by omitting it from the rules it submitted the Board as governing from February 9th, 1931 to October 8th, 1937 (R. 32, 36).

The amended complaint names various employees and gives the date on which each was wrongfully taken and held out of service by Respondent (R. 7-10); some *before* any possible abrogation of the 1929 contract (R. 7-10, 11), others *after* promulgation of the February 9, 1931 rules, and before the September 1st, 1931 bulletin (R. 11-12), and some after September 1, 1931 (R. 8-10). Specific averments of violation of seniority rights accorded either by the 1929 contract, or the February 9th, 1931 rules (Para. IVA, R. 10-12 and 18) are followed by a prayer for an accounting by defendant to the employees named "on account of the facts herein set forth", judgment for the sums found to be due, and general relief (paras. b and e, R. 27). We sincerely believe the court inadvertently misquotes the record, in saying that no claim is being made for damages arising from breach of the contract of 1929 prior to its abrogation (119 F. (2d) 515; R. 97).

(b) Since the proper procedure would have been to refer the case back to the Board, if its award had been too in-

definite for enforcement, we postpone discussion of the court's holding on the sufficiency of fact findings.

(a) It is believed that the court's conception that the inclusion of "cases pending and unadjusted on June 21st, 1934", as "disputes" in the Railway Labor Act of 1934 (45 U. S. C. A., Sec. 153 (i)), operated to limit the jurisdiction of the Board to such classification, is wholly untenable. Yet the complaint satisfies even this rigid interpretation thus:

Notwithstanding the repeated requests of the wrongfully furloughed employees that they be permitted to return to work in accordance with their seniority rights vouchsafed by the 1929 contract, and carried forward into the 1931 rules (Para. IX, second para., R. 20), Respondent continued in its breach of contract; and in open violation of the Railway Labor Act of 1926 failed to recognize the accredited, or any other, representative of the employees (Para. IX, R. 20), or to provide or maintain channels through which labor disputes could be discussed or adjusted (Para. IX, R. 20). It would appear that the employees exhausted all means open to them to lodge a "case" with Respondent.

Would not the upholding of the opinion of the Circuit Court of Appeals mean that the jurisdiction of the Adjustment Board could best be defeated by a violation of law on the part of the carrier?

Following the chaos that resulted from Respondent's refusal to recognize representatives of its employees (R. 20), a collective bargaining contract of October 20th, 1937 was made (R. 16), immediately after which the present controversy was seasonably carried before the proper officials of Respondent, and then lodged with the Adjustment Board (R. 22). No contention is, or can be, made that the

proceedings before the Board were not regular, and its award was entered November 21st, 1938, but not obeyed (R. 36-7).

B.

Jurisdiction.

1. Jurisdiction exists perforce Title 28, U. S. C. A., Sec. 347, Subdivision A.

2. The date of the judgment to be reviewed is May 2, 1941 (R. 85, 98), but petition for rehearing was seasonably filed (R. 99-104), and denied on May 31st, 1941 (R. 105).

3. The decision of the Circuit Court of Appeals is one of first impression with respect to (a) the extent of the jurisdiction conferred on the National Railroad Adjustment Board by Congress (U. S. C. A., Title 45, Sec. 153, h and i); and (b) the minuteness of detail that must appear in the Board's award in order for it to be effective.

It is believed that in order to sustain the dismissal, the Circuit Court has unduly restricted the jurisdiction of the Board, as well as imposed over-exacting requirements as to the definiteness required in its awards. In addition to being in conflict with the *rationale* of applicable decisions of this Court, the decision below evidences the well-known disposition of many of the Federal Judges to unconsciously continue in the outworn belief, that it is their privilege and duty to substitute the Court's idea of what the law should be, for the Legislative declaration of what it is. Thus, the decision below will undoubtedly hamper the functioning of the National Railroad Adjustment Board with the result that it cannot accomplish all of the purposes for which it was created; it decides a question relating to the Construction of a Federal statute in this respect, that has not been, but should be, settled by this Court, so as to liberalize the

powers and functions of the Board. All of the above requires the exercise of the Court's jurisdiction herein.

4. Cases believed to sustain the Court's jurisdiction.

Generally on Sufficiency of Award of Administrative Boards and at Common Law:

Meeker v. *Lehigh Valley R. Co.*, 236 U. S. 412 at 427, 59 L. Ed., 644 at 656;
Mills v. *Lehigh Valley R. Co.*, 238 U. S. 473 at 481, 59 L. Ed., 1414 at 1418;
Grier, et al. v. *Grier*, 1 Dall. 173, 1 L. Ed., 87;
Lynn v. *Risberg*, 2 Dall. 180, 1 L. Ed., 339;
Lutz v. *Linthicum*, 11 Curtis, 58, 8 Peters, 165.

On the Point That the Specification of a Class as Being Included, Does Not Limit a Broader Jurisdiction Granted:

American Surety Co. v. *Marotta*, 287 U. S. 513, 517, 77 L. Ed., 466, 468;
Montello Salt Co. v. *State of Utah*, 221 U. S. 452, 464, 465, 55 L. Ed., 810, 814.

C.

Reasons Relied On for the Allowance of the Writ.

(1) The curtailment of the functioning of the National Railroad Adjustment Board, by limiting its jurisdiction solely to labor disputes that had been reduced to undetermined "cases" on June 21, 1934, or so limiting its power to handle disputes that arose prior to such date, was wholly unjustified by the Railway Labor Act of 1934 (45 U. S. C. A., Sec. 153, h and i). The provision for the means of handling disputes by the Board, "including cases pending and unadjusted on June 21st, 1934" (45 U. S. C. A., Sec. 153 (i)),

did not restrict its field of action to such cases; but constituted a broadening of the jurisdiction theretofore granted it over *all* disputes (45 U. S. C. A., Sec. 153 (h)), or an enumeration of a part of the genus (pp. 14-15, brief *post*).

(2) Where, as here, the Respondent prevented conference on, or possible adjustment of, a long pending labor dispute by refusing to recognize any representative of its employees, but the employees nevertheless made individual requests for adjustment, there was a "case" of labor dispute as contemplated by the Railway Labor Act of 1934 (45 U. S. C. A., Sec. 153 (i)). In holding the contrary, and rewarding the Respondent for so violating the spirit, if not the letter, of the Railway Labor Act of 1926 (45 U. S. C. A., Secs. 146-2, 6 *et seq.*), the Circuit Court of Appeals limited the jurisdiction of the Adjustment Board to instances where the carrier had sought to be co-operative, and denied its power where most needed, in the treatment of recalcitrants. (p. 16 *et seq.*, brief *post.*)

(3) The requirement that an award of the Adjustment Board must specifically find evidential rather than ultimate facts, and inferentially, that it may not require names and amounts due to be furnished subsequently, further unduly hinders the proper functioning of the Board. An award is certain which can be made certain from existing records or data, even at common law; The strongly needed modern trend is to interpret procedural requirements liberally, rather than strictly, whether they pertain to a court or an administrative board. (p. 17 *et seq.*, brief *post.*)

(4) The amended complaint stated a claim entitling the shop craft employees to relief by way of (a) damages for the breach of the contract of 1929 prior to February 9, 1931, and of the February 9, 1931 rules prior to October 20,

1937, irrespective of proceedings before the Board; and (b) the enforcement of the order of the Board. (p. 18 *et seq.*, brief *post.*) The theory of pleading announced by the Federal Rules of Civil Procedure requires trial, if relief could be granted on the claim stated, under any possible state of facts. (*Leimer* v. *State Mut. Life Assur. Co.*, 108 F. (2d) 302, 305). The violation of contract and rules was bluntly alleged, followed by a prayer for damages on account thereof (pet. p. 3, *ante*).

(5) Not only will the Circuit Court of Appeals opinion deprive the affected employees of the relief sought in the present case, but by wrongfully taking their seniority from them, it will prevent many from receiving a pension under the Railroad Retirement Act of 1937 (45 U. S. C. A., Sec. 228a, (d)).

In all of the above respects, the Circuit Court of Appeals so far departed from the accepted course of judicial proceedings, and common justice, as to call for review by this Court.

WHEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Fifth Circuit, commanding that court to certify and to send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 9583, SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, APPELLANT, VS. LOUISIANA AND ARKANSAS RAILWAY COMPANY, APPELLEE, and that the said judgment of said United

States Circuit Court of Appeals may be reversed by this Honorable Court, and that your petitioners may have such other and further relief in the premises as to this Honorable Court may seem meet and just and your petitioner will ever pray.

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SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR,

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vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

I.

The Opinions of the Courts Below.

The opinion of the Circuit Court of Appeals is reported in 119 F. (2d) 509, and that of the District Court in 30 Fed. Supp., 909, and 32 Fed. Supp., 89.

II.

Jurisdiction.

For the sake of brevity, the Statement of Jurisdiction, paragraph B, in the petition, page 5, is here incorporated by reference.

III.

Statement of the Case.

The summary statement of the matter involved, set forth in the petition, pages 1-5, is here incorporated by reference.

IV.

Specification of Errors.

1. The Circuit Court of Appeals erred in holding that the National Railroad Adjustment Board, Second Division, did not have jurisdiction of the claim on which it entered an award in this case.

2. The Circuit Court of Appeals erred in holding that the award of the National Railroad Adjustment Board, Second Division, failed to contain sufficiently definite findings of fact to be enforceable.

3. The Circuit Court of Appeals erred in holding that the amended complaint failed to state a claim on which relief could be granted.

4. The Circuit Court of Appeals erred in holding that the amended complaint did not contain a claim for relief arising out of breach of the 1929 contract, prior to February 9, 1931, and of the 1931 rules after such date.

V.

ARGUMENT.

Summary of the Argument.

POINT "A".

THE RAILROAD LABOR ACT OF 1934 GAVE THE NATIONAL RAILROAD ADJUSTMENT BOARD AN UNRESTRICTED JURISDICTION OVER LABOR DISPUTES; AND THE SPECIFIC INCLUSION THEREIN OF "CASES PENDING AND UNADJUSTED ON JUNE 21, 1934" DID NOT OPERATE TO LIMIT THE BOARD'S POWER TO ACT TO SUCH CLASSIFIED DISPUTES. (*Post.* 13.)

POINT "B".

ASSUMING, FOR THE SAKE OF ARGUMENT, THAT THE BOARD'S JURISDICTION WAS LIMITED TO "CASES PENDING, ETC."; CLAIMS WHICH COULD NOT BE SUBMITTED FOR CONFERENCE BECAUSE OF RESPONDENT'S REFUSAL TO RECOGNIZE, AND TREAT WITH, THE REPRESENTATIVES OF ITS EMPLOYEES WERE "CASES" WITHIN THE CONTEMPLATION OF THE ACT. (*Post.* 16.)

POINT "C".

AN AWARD OF THE NATIONAL RAILROAD ADJUSTMENT BOARD WHICH FINDS A CERTAIN CLASS OF EMPLOYEES ENTITLED TO CERTAIN RELIEF, AND REQUIRES THE PARTIES TO THE DISPUTE TO CHECK AND DETERMINE THE NAMES OF AND AMOUNTS DUE THE INDIVIDUALS AFFECTED, IS VALID; SINCE THAT IS CERTAIN WHICH CAN BE MADE CERTAIN. (*Post.* 17.)

POINT "D".

THE COMPLAINT SOUGHT THE FIXING OF SENIORITY RIGHTS ARISING UNDER BOTH A CONTRACT OF 1929 AND POSTED RULES OF FEBRUARY 9, 1931, AND DAMAGES ARISING FROM THE BREACH OF EACH, DURING ITS OR THEIR RESPECTIVE EXISTENCE; SINCE THE PETITIONER BROUGHT SUIT ON BEHALF OF EMPLOYEES WHO WOULD HAVE BEEN GOVERNED BY EITHER OR BOTH, A CLAIM WAS CLEARLY STATED UPON WHICH RELIEF COULD AND SHOULD HAVE BEEN GRANTED. (*Post.* 18.)

Argument Under Point "A".

In creating the National Railroad Adjustment Board, Congress gave to the Second Division thereof, and we quote: "jurisdiction over disputes involving machinists, boilermakers, etc. * * *" (45 U. S. C. A., Sec. 153-h). In providing the means of invoking the exercise of this unlimited jurisdiction, it later said, and again we quote, that: "The disputes between an employee * * * and a carrier * * * including cases pending and unadjusted

on June 21st, 1934 (shall be handled a certain way, and then may be referred to the Board)" (45 U. S. C. A., Sec. 153-i).

The Circuit Court of Appeals seized upon the above phrase of inclusion as a means of holding the Board impotent to act in this case. "The claim, however," says the court, "was not a 'pending and unadjusted case' on June 21, 1934, and therefore not one of which the Board had jurisdiction (119 F. (2d) 514; R. 94)." And again: "Nowhere in the claim before the Board was it contended that any of the seniority disputes in question were ever presented to anyone or were pending as a 'case' anywhere, until after October, 1937 (119 F. (2d) 514; R. 92)."

At worst, the result of the court's logic is to render the Board powerless to act on *any* type of dispute which had not been presented as a "case" prior to June 21st, 1934. At best, it would so restrict the Board's jurisdiction of disputes arising prior to the fateful date. For example, the bitterest of labor disputes may have arisen in April, 1934, and reached such maturity as to threaten complete interruption of interstate commerce by August 15th, 1934; yet, the Adjustment Board would not have jurisdiction to settle the difficulty if no "case" had been presented to anyone prior to June 31st, 1934. On the other hand, the most trivial labor complaint that had been reduced to a "case" by formal presentation to a section foreman prior to June 21st, 1934, could be handled by the Board. Congress intended nothing so foolish.

The context of the Act, as well as the ordinary meaning to be accorded the words there used, demand the interpretation of the phrase as one of addition, or specification of a part of the greater whole, and not of exclusion or limitation. The word "include," to quote Mr. Justice Butler of this Court, "is frequently, if not generally, used as a word of extension or enlargement rather than as one of

limitation or enumeration (citing cases)." This view was announced in extending the definition of the term "creditor" to common law conceptions, despite the provisions of the Bankruptcy Act specifying what the term "shall include" (*American Surety Co.* v. *Marotta*, 287 U. S. 513, 517; 77 L. Ed. 466, 468).

When the participle of "include" is used, as here, it must follow that it modifies the earlier substantive phrase: "The disputes between an employee, etc." (*Montello Salt Co.* v. *State of Utah*, 221 U. S. 452, 464-465; 55 L. Ed. 810, 814; and also see: *Helvering* v. *Morgans, Inc.*, 293 U. S. 121, 125, 79 L. Ed. 232, 235; *Cannon* v. *Nicholas*, 80 F. (2d) 934, 936; *Cunningham* v. *Sizer Steel Corp.*, 1 F. (2d) 337, 338-9; *U. S.* v. *Nat'l. City Bank of N. Y.*, 21 Fed. Supp. 791, 795). So considered, we must conclude that the specified cases are to be contained in, or comprise a part of, the broader classification of "disputes." Most certainly they should not be said to be the *only* class of disputes the Board was empowered to adjust. The "cases" referred to were likely those in which local or system boards had theretofore become deadlocked (see Appendix A, p. 24, this brief).

The Circuit Court of Appeals has construed a provision of prescription, or limitation, into the Act which Congress definitely refused to place there. Such limitation was sought by the opponents of the Act before the House Committee on Interstate and Foreign Commerce, but refused (see Apepndix B, page 24, this brief). So late as January, 1941, the Committee on Administrative procedure, appointed by the Attorney General of the United States, failed to see limitations of any sort on the time for filing claims under the Act (see Appendix C, page 24, this brief).

We earnestly believe that the future functioning of the Adjustment Board will be greatly hampered, if the decision of the Circuit Court of Appeals should remain the

law in this case. The policy should be to enlarge, rather than restrict, the field of endeavor of the Board. It was created by remedial legislation, that must have arisen from consideration of the impotency of the then existing mediation Board to bring recalcitrants to task. This impotency should not be judicially imparted to the Adjustment Board through unjustified construction of a plain and unambiguous statute.

Argument Under Point "B".

Petitioner's statement (p. 4, petition), shows that the complaint charged the Respondent with deliberately refusing to recognize any representatives of its employees from September 15th, 1930 to October 20th, 1937, or to maintain regular channels for the settlement of labor disputes during such period (R. 20). Manifestly, the only means of seeking settlement of the controversy over seniority, under these circumstances, was by requests of the individual employees of the Respondent, which, says the complaint, were made (R. 20). But, the Circuit Court of Appeals clinches the conclusion that there was no "case" pending by saying, and we quote, "indeed there was no regular channel for presenting disputes or cases (119 F. (2d) 513; R. 92)." Indeed, indeed! Will the Respondent be rewarded for creating such chaotic conditions as that no labor "case" *could* be brought to its attention by representatives of its employees? And this, in the face of the Railway Labor Act of 1926 (45 U. S. C. A., Sec. 146-1 through 12; R. 12).

In the absence of compelling reasons therefor, the word "case" will not be restricted to its narrow or technical legal meaning (*U. S.* v. *Fid. & Cas. Co. of N. Y.*, 115 F. (2d) 475, 7; *Sloven* v. *Wheeler*, 58 Tex. 23, 25). It must not be so restricted, where to do so would punish the carrier that tried to treat fairly with its employees, by recognizing their representatives and providing some means for settling labor

disputes, and reward one that did the converse. No less a "case" of labor dispute is presented where, perforce the carrier's opposition to unions, employees must individually seek their seniority rights, than where the rights are sought by a union. To say otherwise, would, we repeat, place a premium on high handed disregard of the principles of collective bargaining.

Argument Under Point "C".

In view of the fact that the proper procedure would have required a re-reference of the claim to the Board if its award was void for uncertainty (119 F. (2d) 514; R. 93-94), we devote little argument to this point. However, the tendency of some courts to nullify the functions of administrative boards by hypertechnical procedural requirements challenges treatment. More certainty in the present award was required by the Circuit Court of Appeals, than has ever been demanded of arbitration awards at common law. For example, a common law award ordered the payment of money by the losing party, quoting, "to the executor of the said John Grier", in *Grier, et al.* v. *Grier,* 1 Dall. 173, 1 L. Ed., 87. In answer to the contention that the award was too uncertain for enforcement, and could not be aided by averment, Chief Justice McKean replied:

> "John Grier, deceased, has executors, who they are may be easily ascertained; as easily as the costs of an action, *or the charges of a voyage*, which have been adjudged to be good awards, because they can be reduced to a certainty. 3 Cro. 383, Beale *v.* Beale and 1 Rolls Abr. 251. So that this award appears to be certain enough * * *.
>
> "With respect to the observation, that an award is to be interpreted by its own words, and not by any matter out of it, it is law; but when the words of an award have relation to things certain, out of the award, these things may be averred." (Italics supplied.)

Of similar import are the cases of *Lynn* v. *Risberg*, 2 Dall. 180, 1 L. Ed., 339; *Lutz* v. *Linthicum*, 11 Curtis 58, 8 Peters 165; *Standard Chem. & Oil Co.* v. *Sloan Company*, 268 F. 225, 229, and 5 *Corpus Juris*, Sec. 361, page 151, where it is said:

> "When an award furnishes a substantial basis by and through which the parties can, by calculation, by reference to a fixed standard of rule of law, *or by the inspection of particular things or documents, work out the contemplated result* in accordance with the principles settled by, and the rights of the parties declared in, the award, it will be regarded as sufficient. In such cases courts give much force to the maxim. Certum est quod certum reddi potest." (Italics ours.)

Comparison of the Interstate Commerce Act (49 U. S. C. A., Sec. 1, *et seq.*), with the Railway Labor Act (45 U. S. C. A., Sec. 153), discloses that Congress clearly patterned the powers tendered the Adjustment Board on those granted the Interstate Commerce Commission (particularly compare 49 U. S. C. A., Sec. 16 subd. 2, with 45 U. S. C. A., Sec. 153, subd. p). This Court has repeatedly held that the awards of the Interstate Commerce Commission are adequate where ultimate rather than evidential facts are stated, and this where the Commission is by statute required to make specific findings (See *Meeker* v. *Lehigh Valley R. Co.*, 236 U. S. 412, at 427, 59 L. Ed. 533, at 656; and *Mills* v. *Lehigh Valley R. Co.*, 238 U. S. 473 at 481, 59 L. Ed. 1414 at 1418). No greater burden should have been put on the Adjustment Board by the Circuit Court of Appeals.

Argument Under Point "D".

Both the District Court, and the Circuit Court of Appeals, make a fetish of their conclusion that the 1929 contract was abrogated by the proceedings that culminated in the posting of rules on February 9, 1931. It is beyond cavil that relief

was sought by some of the men in the nature of damages for breach of this contract *before* February 7th, 1931 (see Statement, petition page 3; R. 7-10, and paragraph IV-A, R. 10; 119 F. (2d) 512; R. 89, note 8). There was a complete diversity of citizenship, and the subject matter of the case exceeded three thousand dollars ($3,000.00) in value (R. 6, *et seq.*). The period of prescription or limitation had not run under the Louisiana law on the date suit was filed (see Appendix C, page 24). Hence, viewed in its narrowest aspect, the complaint stated a claim on which relief could be granted in the way of damages for breach of contract, irrespective of the Railway Labor Act. This, not because "once an employee, always an employee, once a senior, always a senior (119 F. (2d) 514, R. 94)," but on account of the legal principle, unquestioned before the Circuit Court of Appeals' opinion herein, that a person is bound not only to perform his engagements, but also to repair all the damages that accrued naturally from their breach (*Curtis* v. *Innerarity*, 6 Howard 146, 16 Curtis 632, 634).

Basing the claim on broader grounds, the same proceedings which brought about the supposed abrogation of the 1929 contract, culminated in the substitution of the February 9th, 1931 rules as the future working agreement. These rules were, of course, as binding on the respondent as upon the employees who worked under them. Some of the employees, says the complaint, worked under these rules, and were therefore wrongfully cut off and held out of service in violation of the same (R. 8-10, 11-12; 119 F. (2d) 512; R. 89, note 8). All, further says the complaint, "accepted the seniority rights tendered by (respondent) * * * in said rules of February 9th, 1931, and became bound thereby * * * " (Second paragraph, R. 18). Again, most restrictively, a justiciable claim was stated for the men whose date of wrongful furlough showed they had worked under the February 9th, 1931 rules.

We take the more liberal position, however, that the men in the service of the Respondent, but on furlough, were entitled to the benefits and charged with the burdens of the rules; if the 1929 contract was in truth abrogated or revised by them. Efforts at collective bargaining would uniformly be futile, if one of the parties to be affected by rule or contract resulting therefrom, could obey or enforce it at will. This would seem to be kindergarten logic. Why the elaborate provisions and adjurations in the 1926 Railway Labor Act (45 U. S. C. A., Sec. 146, paras. 1-13), for conferences for the purpose of establishing rules or contracts governing working conditions, if the rules resulting from conference are to be applied solely to new employees, who were not represented at the conferences, out of which the rules came? To attain fair standards of collective bargaining, the employees must have the right of either accepting proposed rules, or of exerting economic pressure by striking in protest thereat. Apparently, the shop craft employees felt any working rules were better than a strike, in crucial 1931; and, if the 1929 contract was abrogated, accepted the February 9th, 1931 rules in lieu thereof. Most assuredly the shop craft employees could, and would, have voted a strike, had the respondent openly refused to establish *any* rules of seniority. This would have possibly caused the appointment of an emergency board by the President (45 U. S. C. A., Sec. 160), and certainly would have invoked a decision through force of economic pressure. Under the view of the Circuit Court of Appeals, the Respondent is to be justified in tendering rules purportedly governing *all* shop craft employees, and then capriciously refusing to apply them to employees on furlough on their effective date. This should not do at all.

Respondent does not contend it had *no* rules of working conditions between February 9th, 1931 and October 20th, 1937; in fact, it submitted Rule 9 as one of a group govern-

ing seniority in the February 9, 1931 rules to the Adjustment Board (R. 32, 36). The Respondent confessed that the rules governed "each of the employees above mentioned (referring to the crafts of its shops)" (R. 32). The question so becomes narrowed to the inquiry of whether the rules affected men in service, but on furlough, February 9, 1931. Does the term "employees", with whom the carrier has the duty of making agreements to avoid interruption of interstate commerce (45 U. S. C. A., para. 146, Sec. 2), embrace those temporarily off active duty through reduction in forces? If we are not to approve collective bargaining in theory, but destroy it in practice, the craft, not the individual employees, must be the bargaining unit, and as such bound by agreements. As said by Justice Simons in *National C. & St. L. Ry. Co.* v. *Rwy. Employees Dept. of A. F. of L.*, 93 F. (2d), 340, cert. den., 303 U. S. 649, 82 L. Ed., 1110:

> "Those who by agreement retain their seniority rights, which entitle them to preference in reinstatement, and by such agreement not only possess rights but are the subject also to obligations, *have not only a future but a present interest in all negotiations* which affect the hours of labor, rates of pay *and working conditions* governing the craft in which they have long been schooled and disciplined. Outside their craft they would fall generally into the ranks of the unskilled, *and as we have seen, the craft and not a more temporary group is the statutory unit for negotiation.* The very emphasis laid by the appellant upon the conflicting interests in an election between those presently working and those temporarily suspended but serves to demonstrate this present interest, and it is not without importance in this connection that the furloughed men whose votes in the election were challenged were all back at work when the case was tried below." (Italics supplied.)

It would indeed be a backward and reactionary step to say that a worker, who has been furloughed through no fault of his own, thus loses his employee relationship. There can be no justification for holding a man on strike to be an "employee" (*Jeffery-DeWitt Insulator Co.* v. *Nat. Labor Rel. Board,* and cases cited, 91 F. (2d), 134, 7, and *Nat. Lab. Rel. Brd.* v. *Carlisle Lmbr. Co.,* 94 F. (2d), 138, 146), but one on furlough to be a "previous employee", as was done by the District Court herein. (32 Fed. Supp., 90, 3rd para.) Such anomaly will remain in the Federal jurisprudence, however, until the errors of the Circuit Court of Appeals in this case be corrected.

The working agreement of October 20th, 1937 in no way limited the rights of the presently complaining employees, or purported to be retroactive in any respect. Certainly it did not do so with regard to rights existing from 1929 to the effective date of the 1937 agreement (See Exhibit "B" brought up as original exhibit, R. 72, and see R. 16).

Conclusion.

It is therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers, in order that the attempted ham-stringing of the functioning of the National Railroad Adjustment Board by harrowing its jurisdiction to cases pending and unadjusted on June 21st, 1934, and by requiring it to find evidential, rather than ultimate facts, may be avoided, and such Board may in the future perform its duties unhampered by such unjustifiable restrictions; and in order that the various employees who have for years been deprived of their livelihood, through defendant's action, may recover their status as employees, and be compensated for the damages occasioned them, and that to such an end a writ of certiorari

should be granted, and this Court should review the decision of the United States Circuit Court of Appeals for the Fifth Circuit, and finally reverse it.

Respectfully submitted,

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APPENDIX A.

The Honorable Joseph B. Eastman, in his testimony before the committee on Interstate and Foreign Commerce of the House of Representatives, made the following statement:

"Another difficulty with the present law, even where an adjustment board has been established, is that, although its decisions are final and binding upon both parties, there can be no certainty that there will be a decision. The two sides are now evenly represented on these boards, and hence deadlocks are a very distinct possibility. Not only are they possible, but they have occurred in a large number of cases, and of late there has been a continually growing tendency toward such deadlocks. The number now existing runs into the hundreds."

APPENDIX B.

It is worthy of note in this case that M. V. Clement, who appeared before the House Committee on Interstate and Foreign Commerce in opposition to the enactment of the Railway Labor Act, his appearance being as representative of the carriers, proposed an amendment to the bill as follows:

"Provided that no board, created under the provisions of this Act, shall consider a grievance of any character, the cause of which arose more than two years prior to the effective date of this Act."

On page 138 of the House Hearings, Mr. Clement said:

"We definitely recommend a statute of limitations for these Boards of Adjustment."

APPENDIX C.

Of further interest is the report of the Committee on Administrative procedure, appointed by the Attorney General of the United States, at the request of the President, submitted January 22nd, 1941, under letter of transmittal, dated January 24, 1941. Senate Document No. 8:

"LIMITATION UPON TIME FOR FILING CLAIMS: Under present statutory provisions there is no limitation upon the time within which claims must be asserted by employees who maintain that their contractual rights have been violated by a carrier. The absence of a limitation has resulted, in exceptional instances, in the filing of claims for acts allegedly committed as much as fifteen years previously. It is within the power of the Board itself to establish time limitations which would protect against the assertion of stale claims. In the absence of appropriate action by the Board, it is recommended that the Railway Labor Act be amended to require that claims, in order to be cognizable by the Board, be filed within a period not later than one year following the act or acts against which complaint is made."

APPENDIX D.

The amended complaint was filed January 25, 1940 (R. 6); although the original complaint had been filed long prior thereto. The Revised Civil Code of Louisiana, Chapter 3, Articles 3528 through 3544, provide liberative prescriptions (discharging the debtor) of one year (Articles 3534-3537 inclusive); of three years (Articles 3538-3539 inclusive); of five years (Articles 3540-3543 inclusive); and of ten years (Article 3544). Many obligations are specified under the prescriptions of one, three and five years, among which are not suits on written contracts, such as the present. Suits on written contracts are covered by the following:

"ARTICLE 3544, TEN YEARS: In general all personal actions, except those before enumerated, are prescribed by ten years."

25

IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 506.

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, *Petitioner*,

v.

LOUISIANA & ARKANSAS RAILWAY COMPANY, *Respondent*.

RESPONDENT'S BRIEF OPPOSING THE GRANTING OF A WRIT OF CERTIORARI.

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September 10, 1941.

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

No. 506.

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR, *Petitioner,*

v.

LOUISIANA & ARKANSAS RAILWAY COMPANY, *Respondent.*

RESPONDENT'S BRIEF OPPOSING THE GRANTING OF A WRIT OF CERTIORARI.

May it Please the Court:

I.

The Opinions of the Courts Below.

The opinion of the United States Circuit Court of Appeals is reported in 119 Fed. (2d), 509, and that of the District Court in 30 Fed. Supp., 909, and 32 Fed. Supp., 89.

II.

Statement of the Case.

For the Court to pass on this petition requires a statement under the Court's rules (Rule 27, 2 (d), 83 L. Ed., 1646), which petitioner has not vouchsafed.

Petitioner sues as the representative of certain shop craft employees, some of whom are dead (R. 24), and as petitioner before the National Railroad Adjustment Board. It brought suit for alleged breach of the agreement of August 1, 1929, between respondent and its shop craft employees, and to enforce Award No. 281 of the Second Division of the National Railroad Adjustment Board. Attached to and made a part of the complaint were the August 1, 1929, agreement, as "Exhibit A", and the *October 20, 1937*, agreement between respondent and petitioner, as "Exhibit B"; also the proceedings before the National Railroad Adjustment Board, Award No. 281, as "Exhibit C".

The defense that the complaint failed to state a claim upon which relief could be granted (Rule 12 (b), Rules of Civil Procedure, 28 U. S. C. A., foll. Sec. 723c) was argued, briefed and sustained by the District Judge (R. 38, 40, 30 Fed. Supp. 909).

Petitioner was allowed to amend. The complaint, as amended, is printed in the record (R. 6). "Exhibit A" was made part of same (R. 14, 3) and was before the Circuit Court of Appeals and is before this Court as an original, separate exhibit. The same is true of "Exhibit B" (R. 16). "Exhibit C" was made part of the complaint (R. 29).

The amendments consisted in showing the date that employees were "cut off", Article IV (R. 7), and in adding Article IV-A (R. 10), and in adding Article VII-A (R. 16), and in amending Articles VII, VIII, IX and XII by including additional references to the rules of February 9, 1931, as having been a "confirmation" or "carrying forward" of the seniority rights of the contract of August 1, 1929.

The same exception of failure to state a cause of action on which relief could be granted was applied as if refiled,

to the amended complaint (R. [illegible]-58). After hearing, argument and filing of briefs, the Court again sustained the exception and dismissed the suit and judgment was signed accordingly (R. 59-63, 32 Fed. Supp., 89).

On appeal to the Circuit Court of Appeals, that Court affirmed (119 Fed. (2d), 509).

The complaint is a long, argumentative paper. As observed by the Circuit Court of Appeals, it abounds in "redundancies, prolixities and inconsistencies" and in "confused and confusing allegations of fact and law". We think it will be in the interest of time and clarity to refer to it as we proceed, but we attempt here to summarize.

From the allegations, Exhibits and prayer it seeks:

(a) To have the employees named in the complaint reinstated under the seniority of the 1929 contract, or under same as "carried forward" by the 1931 rules, thereby ousting the employees of the same crafts, represented by the same petitioner (see "Exhibit B", p. 44), who have done this type of work for respondent during all or the greater part of the last decade.

(b) To recover wages for unperformed work over this period that will "greatly exceed" $100,000.00.

(c) To do this in the face of the allegations that show that this is a dispute *between employees* of which the National Railroad Adjustment Board has no jurisdiction (Article IV-A, R. 10; Article VIII, R. 19; close of Article VII, R. 16; (e), R. 27; Railway Labor Act, 45 U. S. C. A., Section 153 (i)). And see Appendix A of this brief.

(d) To do this in the face of the allegations that show that the 1929 contract was abrogated in 1931 under the use of the provisions of the applicable Railway Labor Act of May 20, 1926 (c. 347, 44 Stat., 577), particularly Sec. 5 (e), Sec. 6 and Sec. 7, First (R. 14, Article VII).

Virginian Ry. Co. v. *System Federation No. 40*, 300 U. S., 515, 548, 81 L. Ed., 789, 799;

And in the face of termination under the thirty day provision of the contract ("Exhibit A", p. 18; R. 50, 30 Fed. Supp., 913; R. 94, 119 Fed. (2d), 514).

(e) To do this in the face of the allegation in Article IV-A concerning those furloughed up to February 7, 1931:

> "* * * The rules of February 9, 1931, and the so-called rule of September 1, 1931, were not and did not purport to be applicable to these men, * * *." (R. 11)

And in the face of the allegation concerning one or two men furloughed between February 7, 1931, and September 1, 1931:

> "* * * the purported rule of September 1, 1931 was not and did not purport to be applicable to these men, as is later shown, and could not be applicable to them, because they were no longer in active service with the company, their seniority rights having been previously fixed." (R. 11-12)

(f) To do this in spite of the closing paragraph of the 1937 agreement ("Exhibit B", p. 43, and R. 16), covering all understandings then in effect. (See sentence bottom R. 25.)

(g) And to do so although the National Railroad Adjustment Board actually found there was no dispute pending and unadjusted on June 21, 1934 (R. 36, R. 48, 30 Fed. Supp., 913), and did not even determine what men were entitled to relief or make an award in favor of anybody (R. 36, R. 93, 119 Fed. (2d), 513).

III.

Answer to Petitioner's Reasons for Allowance of the Writ.

There are five alleged (pp. 6 *et seq.* of petition). The first two, that the jurisdiction of the Board has been restricted too much, are invalid. Whatever might be the justification in some other case, there is no question of public interest presented here and no case calling for the exer-

cise of this Court's supervisory powers to pass on the jurisdiction of the Board, because petitioner *disregards* and, therefore, misstates the underlying reasons for the holding below. Those reasons are, that the allegations and Exhibits made part of the complaint affirmatively establish, that the 1929 contract was terminated in 1931 under the use of the provisions of the applicable 1926 Act and under its own 30 day provision; that the matter presented to the Board in 1938 was the interpretation of the 1929 agreement and that, no matter how wide its jurisdiction, manifestly there was not and could not be any dispute or case pending and unadjusted or even existing in 1934 or 1938 which could be presented to that Board or which could be made the basis of a suit for relief in Court; that the 1937 agreement recognized the termination in 1931 and that it superseded the 1931 rules and covered all understandings; that the Board did not find as a *fact* that there was any dispute pending and unadjusted over which it had jurisdiction; and that the granting of the relief prayed for would displace the legitimate employees of the last eight or ten years, under the 1931 rules and the 1937 contract, whose status and seniority were fixed by the 1937 contract wherein *all the shop craft employees* were represented by this petitioner.

The third, that the functions of the Board are hindered because the Court holds that it must make definite and certain findings of fact, is also invalid.

The law gives the findings the effect of prima facie evidence. Could this be without *precise* findings? Under similar language of the Interstate Commerce Act, this Court requires certain standards for findings, including the amount of damages.

Meeker v. *Lehigh Valley R. Co.*, 236 U. S. 412, 59 L. Ed., 644.

Mills v. *Lehigh Valley R. Co.*, 238 U. S. 473, 59 L. Ed. 1414.

The Court below was right, *BUT*

(a) Petitioner, although allowed to amend, stands on the award as made.

(b) *Notwithstanding that,* the Court said that the suit properly should have been stayed until the Board could make findings *but for the fact that* there was no pending and unadjusted case on June 21, 1934, of which the Board had any jurisdiction (as the Act requires), and no cause or right of action for an award of the Board or a judgment of Court, for the reasons and on the grounds we have outlined above.

The fourth alleged reason is not even good on its face. It disputes the definite finding of fact as to the pleadings made by two courts and four judges below. It presents no cause for review.

> *General Talking Pictures Corp.* v. *Western Electric Co.,* 58 S. Ct. 49, 304 U. S. 175, 82 L. Ed. 1273, Headnotes 2 and 3.

Besides it *disputes* its own allegation as to the *sole reason* why re-employment allegedly was refused (middle R. 19).

As to the Rules of Civil Procedure, Rule 12 (b) permits the raising in advance by motion of a plea of no cause or right of action and Rule 12 (d) requires that it be heard in advance, on application, unless the Court orders deferment.

> *Federal Rules of Civil Procedure,* 28 U. S. C. A., foll. Sec. 723c.

The fifth ground is not covered by the complaint, was not mentioned below, is not argued now, is evidently "lagniappe", and we disregard it.

> "1. The Supreme Court's consideration of a case will be limited to the questions presented by the petition for the writ of certiorari."
>
> *Crown Cork & Seal Co., Inc.* v. *Ferdinand Gutmann Company, Inc.,* 304 U. S. 159, 82 L. Ed., 1265.

IT IS THEREFORE CLEAR THAT THE COURT BELOW HAS NOT SUBSTITUTED ITS JUDGMENT FOR THAT OF AN ADMINISTRATIVE AGENCY, NOR IS THERE JUSTIFICATION FOR PETITIONER'S CRITICISM OF THE LOWER JUDGES, THAT THEY ARE INDULGING IN "THE OUTWORN BELIEF" THAT IT IS THEIR DUTY TO SUBSTITUTE THEIR IDEAS OF WHAT THE LAW SHOULD BE FOR "THE LEGISLATIVE DECLARATION OF WHAT IT IS". THOUGH THIS COURT MAY NOT AGREE WITH EVERY STATEMENT OF THE DECISIONS BELOW, THE CONCLUSIONS AND JUDGMENT ARE CORRECT.

When the Court has reached this point, if it has any doubt that our position is sound, we ask that it read our enlargement of this answer, below.

IV.

The Writ Should Be Refused Because the Decisions of the Lower Courts Are Correct, the Complaint Does Not State a Cause of Action or Claim on Which Relief Can Be or Could Be Granted, and the National Railroad Adjustment Board Was Without Jurisdiction.

A.

The National Railroad Adjustment Board had no jurisdiction to attempt an award, because this is a dispute between employees.

Mr. Justice Brandeis once observed as to jurisdiction:

> " * * * Jurisdiction cannot be effectively acquired by concealing for a time the facts which conclusively establish that it does not exist. * * *"
>
> *Lambert Run Coal Co.* v. *Baltimore & O. Ry. Co.*, 258 U. S., 377, 42 S. Ct. 349, at 351, 66 L. Ed., 671.

There is no open allegation that this is such a dispute, but the averments show that it is *really* and *necessarily*

such. See the averments. (Article IV-A, R. 10; Article VIII, R. 19; (c), R. 27; Article VII, R. 16; R. 34-11.)

The opening and closing pages of "Exhibit B" (separate exhibit) show that the 1937 agreement was with petitioner, representing respondent's shop craft employees. The closing provision is clear ("Exhibit B", p. 43).

Afterwards the clique in control tried to put a "fast one" over the legitimate employees by going before the National Railroad Adjustment Board with the stale claim that they were entitled to seniority under the 1929 agreement, and should displace their brethren. To make it more despicable, this petitioner represented *all* of these employees.

The Railway Labor Act, 45 U. S. C. A., Section 153 (i), gives the National Railroad Adjustment Board jurisdiction over "disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on June 21, 1934". They are the disputes that can be handled with operating officers and then taken before the Adjustment Board. On them, if there be an award, the carriers may be sued under the advantageous conditions of (p).

There would be such a case, *e. g.*, if this respondent had violated the seniority provisions of the 1937 agreement. Such violation would be against the rights of every employee who is a party thereto. A case could be laid.

But this is no such case. It is internecine strife. And the Courts are solemnly called on to approve the wrong. Is it possible to say the Circuit Court of Appeals was wrong when it stated, with reference to petitioner's contention under the 1929 contract, "The result of this theory is the claim, that though most of those named have not worked for the company during the past ten years, they must not only be now paid for all of that time as though they had, but must be permitted to displace others who have been and were, working, as employees of the company under the 1931

rules and amendments, when the 1937 contract was signed, and whose seniority, as established and fixed by those rules, was settled and confirmed by the contract. This will not at all do."?

(R. 94, 119 Fed. (2d), 509, 514)

A similar attempt was made in *Stephenson* v. *N. O. & N. E. R. Co.* (Miss.), 177 Sou., 509. There was a dispute between employees over seniority rights. One group took the matter before the Board as a dispute against the railroad and got an award. On the suit of the other employees, the Court, in a well-reasoned opinion, held that the Board was without jurisdiction.

The same holding was made in *Long* v. *Van Osdale* (Ind. App.), 26 NE (2d), 69.

As persuasive, see *Nord* v. *Griffin*, 86 Fed. (2d), 481, writ denied, 81 L. Ed., 879.

We direct the Court's attention to Appendix A of this brief.

Since the Board has no jurisdiction of disputes between employees, only the courts can settle them in cases where all parties are before the Court.

National Licorice Co. v. *National Labor Relations Board*, 309 U. S., 350, Headnote 8, 84 L. Ed., 799.

B.

The Board had no jurisdiction and there is no cause of action because the 1929 contract was abrogated in 1931.

The 1929 contract was terminated in 1931:

(a) under the provisions of the 1926 Act (c) 347, 44 Stat. 577.

See allegations of petitioner, Article VII of its complaint (R. 14), showing affirmatively that this agreement remained in effect without objection until September 15, 1930, when respondent served notice

on petitioner of its desire to abrogate and revise the schedule of rates of pay and working conditions of the shop craft employees, and that pursuant thereto conference was held on October 1, 1930, at which respondent submitted a new wage scale and draft of new rules; that no agreement was reached and on October 4, 1930, petitioner invoked the services of the Board of Mediation, which worked at the matter until February 6, 1931, when it suggested that the parties submit the matter to arbitration; that this suggestion was accepted by petitioner, but rejected by respondent; and that immediately thereafter respondent promulgated the rules of February 9, 1931, to govern employment in its shops thereafter, and that it thereafter amended the seniority rule on September 1, 1931.

See Secs. 6, 5 (c) and 7 of that Act.

See discussions and quotations by the District Judge (R. 44 and 51, 30 Fed. Supp., 911 and 914).

And see repeated statements in *Virginian Ry. Co.* v. *System Fed. No. 40*, 300 U. S., 515, 81 L. Ed., 789, at 799, 805 and 806. At 799 it is said:

"* * * The statute does not undertake to compel agreement between the employer and employees, but it does command those preliminary steps without which no agreement can be reached. It at least requires the employer to meet and confer with the authorized representative of its employees, to listen to their complaints, to make reasonable effort to compose differences—in short, to enter into a negotiation for the settlement of labor disputes such as is contemplated by § 2, First."

Virginian Ry. Co. v. *System Fed. No. 40*, 300 U. S., 515, 81 L. Ed., 789, 799.

"* * * For neither the original 1926 Act, nor the Act as amended in 1934, indicates that the machinery provided for settling disputes was based on a philosophy of legal compulsion. * * *"

Moore v. *Illinois C. R. Co.*, October Term 1940, 85 L. Ed. Advance Opinions, No. 11, 722, 725.

(b) under the 30 day provisions of the 1929 contract.

See separate "Exhibit A", p. 18, and R. 50, 30 Fed. Supp., 913.

Leschen & Sons Rope Co. v. *C. T. Patterson & Co., Ltd.*, 130 La., 557, 58 Sou., 336.

See statement of Court below, R. 94, 119 Fed. (2d), 514.

And see petitioner's specific recognition of such termination in the agreement of October 20, 1937:

"These General and Special rules constitute the Agreement between the Louisiana & Arkansas Railway Company and its shop employees represented by System Federation No. 59, Mechanical Section, Railway Employes Department, American Federation of Labor, covering rules, working conditions and rates of pay, and covers all understandings now in effect, and supersedes rules posted February 9th, 1931, and will remain in effect until after thirty (30) days written notice served by one party on the other, or in accordance with procedure outlined by the Railway Labor Act."

"Exhibit B", p. 43.

In a brief filed by Mr. Frank L. Mulholland and others in Civil Action File No. 1165, in the District Court of the United States for the District of Columbia, *The Washington Terminal Co.* v. *F. E. Boswell, et al.*, it is stated at p. 53:

"Although the statute speaks of the action as one to enforce an order of the Board, and although the procuring of such an order is undoubtedly a prerequisite to the use of the statutory procedure, it is apparent that the mere existence of the order in no sense establishes that the plaintiff in such a suit has a cause of action. He must plead more than the order. He must prove more, and a judgment of enforcement by no means follows as a matter of course from the order's issuance. *His cause of action before the Court is dependent upon the agreement, out of the interpretation of which, the alleged dispute arose.* The existence of the order of the Board merely assists him in preparing and proving that cause of action." (Emphasis ours)

Undoubtedly this is a correct statement of the law. The Railway Labor Board is a very limited body as compared, e. g., to the National Labor Relations Board.

Mr. Mulholland's firm was on the complaint here, but is not on this application for a writ.

Such a contract does not give an indefinite tenure. Its rights and obligations cease when it ends. There could be no breach of it by an act done after it has terminated.

Aside from common sense and the general law of contracts, the authorities agree that rights under such contracts terminate when the contract ends. There could hardly be a better or more correct statement than that of the Circuit Court of Appeals in the fourth from last paragraph of the opinion (R. 97, 119 Fed. (2d), at 515).

The ruling is supported by the very case petitioner relies on: *Nashville C. & St. L. Ry. Co.* v. *Railway Employees Dept. of A. F. of L.*, 93 Fed. (2d), 340, cert. denied, 303 U. S., 649, 82 L. Ed., 1110. The Court maintained the position that men under an *agreement*, temporarily laid off, retain their seniority rights and "the employer-employee relationship, with mutual rights and obligations, *until in pursuance of its terms it is finally ended.*" (Emphasis ours)

> 93 Fed. (2d), at 342.

Also by *Y. & M. V. R. Co.* v. *Webb*, 64 Fed. (2d), 902, 904:

> "* * * But the employment though indefinite as to time is a relationship *while it lasts*, and is subject to the conditions fixed in the working agreement for the industry. * * *" (Emphasis ours.)
>
> *Y. & M. V. R. Co.* v. *Webb*, 64 Fed. (2d), 902, 904.

and by *Illinois C. R. Co.* v. *Moore*, 112 Fed. (2d), 959, 966 (17), reversed on the point of not following the Mississippi Court; and by *Stephenson* v. *N. O. & N. E. R. Co.* (Miss.), 177 Sou., 509, at 514.

The effort to make it appear that the Court held that a furloughed employee is not an employee is simply a

"mare's-nest." What the Court held is set out in the last four paragraphs of the opinion and we ask this Court to read same as a refutation of this argument.

Respondent's very position is that men furloughed before February 7, 1931, were employees and bound by the proceedings that terminated the 1929 contract.

As to the attempt to tie the 1929 contract to the 1931 rules, the allegations themselves actually repudiate the idea. (R. 11, R. 11-12.)

C.

There is no allegation of a breach of the 1929 contract while it existed or of the February 7, 1931, rules before their amendment.

Petitioner bases the seniority claims on Rules 8, 9 and 12 of the 1929 contract and similar provisions of the 1931 rules (R. 14, 17, 18). Rule 9 (separate "Exhibit A", p. 3) reads:

> "When forces are reduced seniority is to govern when force is increased, men laid off will be given preference in re-employment, in the order of their seniority, if available within ten (10) days."

There is no allegation in the complaint that any furloughed employee was denied re-employment under the ten day rule or otherwise during the existence of the 1929 contract or during the existence of the 1931 rules, prior to their amendment. The complaint, notwithstanding Article IV, sets out in Article VIII (R. 19) that petitioner does not know the dates when the furloughs took place; and in the same Article (R. 19-20) that it does not know the dates when the positions of said employees were given to other persons. In the same Article (R. middle 19), it is alleged that respondent gave as its *sole reason* (emphasis ours) for not replacing furloughed men the one year after furlough rule of the September 1, 1931, amendment. Since said reason could not possibly have been applied before the amendment was adopted, this affirmatively shows that

there is no allegation of any breach of the ten day rule or otherwise under either the 1929 contract or the 1931 rules prior to the date of the amendment. It shows affirmatively that any refusal to re-employ them was subsequent to said date and, therefore, is necessarily based on the alleged breach of the contract, which breach allegedly took place long after the contract, with all of its rights, had terminated.

In Article IX (R. 20), it is stated that after new employees were given positions, some of the furloughed employees requested reinstatement under the 1929 contract *as carried forward* (emphasis ours) by the February 9, 1931, rules. There is not the remotest allegation, however, that anyone of them was refused reinstatement under the ten day rule or otherwise during the time of the existence of such rule.

D.

An award was sought exclusively on the 1929 contract. All seniority rights thereunder and all rights to re-employment thereunder having terminated in 1931, there was no justiciable dispute before the Board in 1938, and none pending and unadjusted in 1934. There was no jurisdiction in the Board, and no right of action here has been or can be stated.

Petitioner alleges (R. 22) that *after* the new agreement of October 20, 1937, it endeavored to settle what it calls the long pending dispute "as to the *interpretation of the Agreement* of August 1, 1929" (emphasis ours) by conferences with the respondent in accordance with the Railway Labor Act, and applied to the National Railroad Adjustment Board for the settlement of *said* dispute. The award shows that it sought the settlement of a dispute arising from the alleged violation of the agreement of August 1, 1929, and contended that the rules which the railroad company had posted were *arbitrary* (R. 29, bottom R. 35).

Petitioner nowhere alleges any handling of a dispute under the rules of February 9, 1931, or under such rules as

amended. The requirement that relief be sought up through the highest operating officer of defendant was a prerequisite of an appeal to the Adjustment Board.

Illinois C. R. Co. v. *Moore,* 112 Fed. (2d), 959, 966.

There is no pretense in any allegation that there was a dispute under the relationship created by the rules of February 9, 1931, or under such rules as amended or that any such claim was taken to the Adjustment Board. The contract of 1929 having been terminated and superseded, and there being no allegation of any breach thereof during the time of its existence, or that during its existence any employee named was refused re-employment under the 1929 agreement, the amended complaint fails to state a cause of action.

E.

The contention of petitioner that the jurisdiction of the Board has been too narrowly construed is groundless.

The National Railroad Adjustment Board was created by the Act of June 21, 1934 (45 U. S. C. A., Sec. 153). Subsection (i) states its jurisdiction.

A Federal statute, including one governing procedure, as here, should not be construed to act retrospectively unless its language be so clear as to admit of no other construction. In the absence of express command or unavoidable implication, such statutes operate upon the future only.

U. S. v. *St. L. S. F. & T. R. Co.,* 270 U. S., 1, 70 L. Ed., 435. Mr. Justice Brandeis was the organ of the court.

The Act here must be held, therefore, to give jurisdiction to the Adjustment Board in prior cases only *where cases were pending and unadjusted on June 21, 1934.* This section certainly makes the Act prospective otherwise.

However wide a construction is claimed, it can hardly be claimed in reason that the Board had jurisdiction to con-

strue the rules and working conditions of a contract terminated years before its creation. *This was the real basis of the holdings below, and its soundness is unimpeachable.*

The contract, after notice and conference, had been before the Mediation Board which had concluded its four months' labor. Arbitration had been declined. As the Mississippi Court said in the *Stephenson* case, 177 Sou., at p. 515:

> "* * * The dispute may have been 'unadjusted,' but it was not 'pending' before any board or tribunal at the time of the enactment of the Railway Labor Act of 1934. * * *"
>
> *Stephenson* v. *N. O. & N. E. R. Co.*, 177 Sou., 509, 515.

It may be noted that this decision agrees with the Courts below.

We direct particular attention to the fact that both Courts below based their holdings partly on the *actual* finding of the Board that this matter was not within its jurisdiction.

> "There is evidence that a dispute existed on this railway to the extent that the President appointed a fact finding commission to report on the same, and while the case in question is not one which the fact finding commission investigated, it is one of the instances growing out of this dispute. *Therefore*, the claim was pending and unadjusted June 21, 1934." (Emphasis ours) (R. 36)

Said the District Court:

> "This is too far-fetched in inference in 1938, based upon a law of 1934, to keep alive a contract born in 1929, definitely closed in 1931. We cannot accept such a finding or conclusion of law, unsupported by the facts, to form a cause of action in this suit.
>
> "Besides, the above paragraph confesses its own weakness; 'the case in question is not one which the fact finding commission investigated'; the 'case in question' is plaintiff's present cause of action in this very suit. Therefore, the President's Fact Finding

> Commission did not consider at all these plaintiffs and their supposed cause of action."
> (R. 48, 30 Fed. Supp., 913.)

See similar comment, 119 Fed. (2d), 513, R. 92.

In an effort to get the writ, petitioner now argues that the Board has unlimited jurisdiction of all disputes, of whatever ancient vintage, involving whatever contracts, and that they did not have to be pending and unadjusted cases on June 21, 1934, as the Act requires. This is an "about face". The complaint labors to establish that there was such a dispute on that date (R. 11, twice; first half of R. 21). This last citation shows clearly that petitioner construed the language of the Act to be a limitation and not an extension. It also shows the theoretical and gossamer-like nature of the contention.

Dictionary definitions do not appear particularly helpful. The word "include", of course, often enlarges as " 'persons' shall include corporations". So it was in the cited *Marotta* case, 287 U. S., 513, 77 L. Ed., 466. Mr. Justice Butler arrived at the meaning by considering terms used twenty-nine times in the Bankruptcy Act.

On the other hand, it often means that it forms a part of the genus. So it was in the cited *Montello* case, 221 U. S., 452, 55 L. Ed., 810.

Neither these cases nor any others cited show that the decision of the Court of Appeals is contrary to the "rationale" of this Court's decisions, using petitioner's indefinite language.

There is now a "hue and cry" that the persons named in the complaint had no way to state a case. The argument overlooks or intentionally disregards several facts:

(a) The contract had been terminated for several years.

(b) Petitioner was not the employees' representative because no new contract could be reached.

(c) Men furloughed after February 7, 1931, had no claim under the contract.

(d) There is no allegation that any furloughed employee sought at any time to exercise the privilege of Rule 15, Contract of 1929 ("Exhibit A", pp. 4-5).

(e) There is no allegation that any such employees took steps to secure a conference under the rules. Petitioner did not even make the rules a part of its complaint.

(f) The furloughed men did not present the matter to the President's Fact Finding Commission (R. 36).

(g) There is no allegation that respondent did not have its operating officers, or that any employee did not have access to them, or that there was any effort, prior to June 21, 1934, to state their claims to such operating officers.

F.

Nor is there merit in the contention that there was an award here under the terms of the Act.

Petitioner made no effort to secure a re-reference. It stands on the alleged award. In fact there could not have been any interpretation of facts that were never found.

The Board did not even find what men should be reinstated or that any particular man should be. Apparently some were not named in the submission.

> "The list of men affected, as submitted by the employes, was not complete, and this Division is unable to determine thereby those who are entitled to relief under the contention made by the employes. This, therefore, is a matter for both parties to the dispute to check and determine those who are entitled to such relief." (R. 36)

These findings are generalizations and not definite findings of fact and final awards as contemplated by the Act and such as to be prima facie evidence (Sub-sections (m), (o) and (p)).

The time lost is not fixed for any man.

The amount due any man is not fixed but respondent was ordered *November 21, 1938,* to pay them by *January 1, 1939.*

This is not an award as required by (m). It cannot be said to be in writing. It is monstrous to say that it is *final* and *binding*. It does not fix the sum to which anyone is entitled under (o). It is a travesty to say that it is *prima facie* evidence of facts under (p). (p) says: "prima facie evidence of the facts therein stated".

It does not find ultimate facts even. What is the object of a hearing before the administrative board and the giving of its findings *prima facie* evidentiary effect, if it is not to state precise and definite facts?

The random cases cited are not persuasive that this is an award under the Act. More pertinent are *St. Patrick* v. *Dakin*, 1 Rob. (La.), 202, 206, citing *Carnochan* v. *Christie*, 11 Wheaton, 446, 6 L. Ed., 516.

The two cited cases relating to the Interstate Commerce Act, *Meeker* v. *Lehigh Valley R. Co.*, 236 U. S., 412, 59 L. Ed., 644, and *Mills* v. *Lehigh Valley R. Co.*, 238 U. S., 473, 59 L. Ed., 1414, do not sustain the petitioner in any sense. They hold that under that Act it is not necessary to set out the evidential facts, but it is necessary to set out the ultimate facts, including the amount of damages. See the findings and orders to the extent they are copied and see the standard of facts (59 L. Ed., at p. 656, quoted at p. 1417). The award and order here fail utterly to meet this standard.

The statement of Judge Hutcheson (R. 93, 119 Fed. (2d), at 513) is eminently correct. *BUT*, see also, top R. 94, the reasons why there should have been no re-reference here.

G.

The 1937 contract, made part of the complaint, destroys any cause of action.

The petition to this Court makes no pretense (as indeed it could not) of avoiding the effect of the 1937 contract, which alone shows that no cause of action has been or could be stated.

The 1937 contract ("Exhibit B") demonstrates (a) that it constituted on and after October 20, 1937, the only contract between the shop craft employees, represented by petitioner, and respondent; (b) that it covered all understandings in effect on and after such date; (c) that it superseded the posted rules of February 9, 1931, (d) thereby disposing finally of any complaint there could have been under such rules, and (e) thereby disposing finally of any complaint there could have been under the 1929 agreement "carried forward" or "confirmed" by the posted rules; (f) that petitioner recognized that the 1931 rules had superseded the 1929 contract; (g) that, IF employees furloughed prior to February 9, 1931, remained employees after the 1929 contract was terminated and superseded, then any former complaint was finally disposed of; and (h) that on and after October 20, 1937, seniority was determined in a manner different from and inconsistent with the 1929 contract and the 1931 rules.

On (h), see Rules 25, 26, 27 and 28. ("Exhibit B," pp. 9-11)

Aside from the expressed agreement of the parties in the closing paragraph of "Exhibit B" (p. 43), the terms of the new contract were so inconsistent with the rules of 1931 and the 1929 agreement that they were discharged as a matter of law.

Wiley v. *Dixie Oil Co.*, 43 Fed. (2d), 51.
Luster v. *Gilruth*, 60 Fed. (2d), 751, 755-756, writ of certiorari denied, 77 L. Ed., 570.
U. S. ex rel. v. *Lamont*, 155 U. S., 303, 39 L. Ed., 160, 164.
Perkins v. *Frazer and Nason*, 107 La., 390, 394, 31 Sou., 773.

H.

Whatever seniority rights shop craft employees had under the 1931 rules did not arise because of any contract between petitioner and respondent. Petitioner was not a party thereto. Neither the Railway Labor Act nor the gen-

eral law gives petitioner a right of action for the reinstatement of such employees or for the recovery of back-pay for them. Such employees would necessarily have to bring their own suits. This applies to all employees who worked under the rules and to all the prior employees under the allegations of the amended complaint that seniority under the 1929 contract was carried forward or confirmed by virtue of the 1931 rules. The closing paragraph of the Court of Appeals correctly states the matter. (119 Fed. (2d), 516, R. 97-98)

It is respectfully submitted that the application should be refused.

Respectfully submitted,

A. L. Burford,
Texarkana, Ark.-Tex.

White, Holloman & White,

T. W. Holloman,
Alexandria, Louisiana.

Attorneys for Respondent.

September 10, 1941.

APPENDIX A.

No. 10,523

26th Judicial District Court,

Webster Parish, Louisiana.

C. W. McCollum, et al

versus

Louisiana & Arkansas Railway Company, et al

PETITION

To the Honorable the Judge of the Twenty-sixth Judicial District Court holding Sessions in and for Parish of Webster, State of Louisiana:

The petition of C. W. McCollum, H. H. Pippen, J. R. Smith, J. H. Jones, F. L. Brewster, R. C. Bridges, A. D. Lowe, Joy Pippen, L. R. Malone, J. H. Johnson, R. R. Goss, Emmit Colvin, E. L. Goss, J. D. Booth, Joe Almond, G. C. Goss, W. J. Colvin, M. A. Liles, R. H. McCollum, all being residents of Webster Parish, Louisiana, and W C. Alford and A. M. Parker, both being residents of Winnfield, Louisiana, and J. M. Winderweedle and T. H. Guillory, both being residents of Shreveport, Caddo Parish, Louisiana, with respect represent:

I.

That your petitioners are employees of Louisiana & Arkansas Railway Company in the shops at Minden, Shreveport and Winnfield, Louisiana, and are employed in their respective capacities as carmen and carmen's helpers, and that their line of employment is governed by rules and regulations and contracts under which their employment was entered into and under which they are working at the present time.

II.

Petitioners further show that said petitioners are employees and in that capacity have acquired years of seniority, as will appear from the list marked "Exhibit A", attached hereto and made part hereof, which shows fully the years of seniority acquired by each of the plaintiffs herein. That said seniority was acquired by work and labor performed and contracts made with Louisiana & Arkansas Railway Company and dates back to the years written opposite each name as shown by Exhibit A; that this seniority right is a property right under the laws of this state.

III.

Petitioners further show that they entered the employment of the Louisiana & Arkansas Railway Company in good faith and complied with and concurred in and worked under the rules and regulations adopted by said railway company in the year 1931, and the contract made with Louisiana & Arkansas Railway Company in the year 1937, a copy of said rules as shown above being attached hereto and made part hereof.

IV.

Further show that they entered into their employment in good faith, a great number of the plaintiffs herein have purchased homes in the city of Minden, are married and are raising their families and are solely dependent upon their employment and the benefits to be derived from their employment and seniority with Louisiana & Arkansas Railway as their sole and only means of support, and that they have violated no rule or regulation of said railway company and are in good standing in every respect and were employed regularly and continuously until the action which will be set out hereinafter in detail, came about.

V.

Petitioners further show that some time in the past that the System Federation No. 59, Railway Employee's Department of American Federation of Labor, instituted a complaint against the Louisiana & Arkansas Railway Company before the National Railroad Adjustment Board in Chicago, Illinois, contending therein that certain former employees of the Louisiana & Arkansas Railway Company had certain grievances against said company, and asked for a hearing thereon; said cause of action bearing Docket No. 292 on the docket of the National Railroad Adjustment Board, and that a hearing was had on said complaint which was instituted by System Federation No. 59, Railway Employees Department of American Federation of Labor, and was defended by Louisiana & Arkansas Railway Company, and after hearing, an award was made, a copy of which is attached hereto and made part hereof for the purpose of showing "rem ipsam", and for that purpose alone.

VI.

Further show that in said award that the former employees of the Louisiana & Arkansas Railway Company who had been previously discharged, laid off or dismissed from service, were granted a judgment against L. & A. Railway Company ordering the payment of back salary and ordering their reinstatement with full seniority rights, and in short, granted to the defendant company the period of time until January 1, 1939 to comply with the award.

VII.

Further show that said award is null and void, of no force and effect as applicable to your petitioners herein, for the following reasons:

A. That your said petitioners herein were not parties to said litigation and had no notice thereof, nor were they made parties thereto, nor had they any knowl-

edge of the purpose of said litigation, nor were they granted any opportunity for hearing thereon.

B. That the said National Railroad Adjustment Board is without jurisdiction to decide seniority rights between employees of a railroad company.

C. That said award is incorrect and improper on its face; that the National Railroad Adjustment Board had no jurisdiction over a cause of action arising before its creation.

D. That no judgment of any court can be binding on a party thereto without first citing said party or having said party before the court.

E. That an enforcement of this award constitutes the taking of the plaintiffs' property without due process of law, and is in violation of Amendment 5 of Constitution of United States and in violation of Section 2 of Article I of Constitution of State of Louisiana.

VIII.

Petitioners further show that this award has become final insofar as the time is concerned as enumerated in said award, and that the plaintiffs in said award and the defendants therein are threatening to place same in effect and have gone so far as to discontinue the services of these plaintiffs herein until such time as this award will become final or be put into effect; that the said defendants in said award, Louisiana & Arkansas Railway Company has informed your petitioners that they will not be returned to work, that they will be deprived of their living and their rights under their seniority rights, and that their seniority rights will be completely nullified and destroyed by the placing in effect of this award; which award was rendered without the consent and knowledge of or participation by plaintiffs in any form; that, insofar as plaintiffs are concerned, this award is null and void, of no force and effect, unconstitutional in its scope and deprives them of their property and liberties without due process of law and is in violation of the Federal Constitution as well as the State Constitution.

IX.

Petitioners further show that the proposed reinstatement of the men named in the award to seniority rights as ordered by said Board, will deprive these plaintiffs and employees of their employment with the said railroad company, in that the said Louisiana & Arkansas Railway Company can and will employ such a limited number of men in the various crafts, and especially the carmen's craft, that these plaintiffs herein can and will have no opportunity to work under seniority rights that they hold, and, thereby and in actuality destroy the benefits that they have acquired by labor, services and contract. Further show that they will be immediately replaced by some of the men named in said award and will thereby be deprived of their seniority rights, employment and manner of making a livelihood, as hereinabove set out.

X.

Petitioners further show that their vested seniority rights which were acquired under contract and by labor and services rendered and performed, will be completely destroyed, nullified and of no benefit to them if this award is allowed to go into effect, and that your plaintiffs herein are entitled to have a day in court and have a hearing thereon, and until such time as said award becomes final in a court of competent jurisdiction qualified to pass on the seniority rights of the litigants herein, the Louisiana & Arkansas Railway Company and the System Federation No. 59, Railway Employee's Department of American Federation of Labor should be enjoined and restrained from interferring with or molesting the seniority rights or the rights of plaintiffs to work, and that their status quo should be maintained in relation to the railway company and be perpetuated in that form until such time as a court of competent jurisdiction holds to the contrary.

XI.

Further show that they have no legal remedy on this matter and it is necessary and proper that an equity jurisdiction of this court be called into existence to protect their property rights, seniority rights and their liberties and to hold same in status quo unmolested by the two defendants herein, and uneffected by any litigation of defendants or any compromise or agreement made by them, until such time as your plaintiffs are afforded an opportunity to present their claim and their position to a court of jurisdiction.

XII.

Further show that when they were employed by L. & A. Ry. Co. that they were assured by contract then in existence and the rules and regulations laid down for their employment by the railroad company, that their rights, seniority and liberties would be protected thereby, and that the rules of February 9, 1931 which are attached above, guaranteed that privilege; and, that on Oct. 20, 1937 a new contract was entered into by defendants herein and that it superceded the rules of Feb. 9, 1931, and that in said contract, their rights to work and their rights according to their seniority were guaranteed, and under said rules and contract as applicable to plaintiffs herein, no employee out of service for twelve months would have any rights to exercise seniority rights guaranteed theretofore. All of which is the law applicable to the parties hereto, renders said award, insofar as plaintiffs herein are concerned, null and void and of no force and effect, unconstitutional and inapplicable to their present status.

XIII.

Further show that Louisiana & Arkansas Railway Company is a corporation organized under the laws of the state of Delaware, but operating and doing business in the State of Louisiana with their principal place of business in the City of Shreveport, Louisiana, with a duly designated agent for service.

XIV.

Further show that System Federation No. 59, Railway Employees' Department of American Federation of Labor is a federation union domiciled in Webster Parish, Louisiana, with Stewart E. Stephens as Chairman and agent for service.

XV.

Further show that some of plaintiffs belong to a local craft, a great number of them are members of no craft or union, and that not one of plaintiffs herein authorized at any time or had any connection with or were party to the contest before National Railroad Adjustment Board, and not being a party to same nor notified thereof, are not bound in any wise by the judgment rendered therein.

XVI.

Further show that the monetary awards as rendered in the said award above referred to in no wise effects your petitioners and your petitioners have no interest therein and their complaint is aimed at the reinstatement and granting of seniority to the designated parties in said award which deprives your petitioners of their seniority rights, nullifies and destroys same without a hearing or without an opportunity for hearing before a court of competent jurisdiction.

XVII.

Further show that an injunction is necessary and proper to protect their interest in this litigation and that unless same issues that they will suffer irreparable injury, be deprived of their property without due process of law, deprived of their mode and manner of making a livelihood and rendered destitute, all without a hearing or an opportunity to be heard; that the injunction should issue herein as prayed for.

Wherefore Pray that rule nisi issue herein as the law directs, directed to Louisiana & Arkansas Railway Com-

pany though its duly authorized agent for service, and to the System Federation No. 59, Railway Employee's Department of American Federation of Labor, through its designated Chairman, and that they and each of them be ordered to show cause on a day and date to be fixed by this Honorable Court, why temporary injunction should not issue herein restraining both defendants and prohibiting them from putting into effect the award No. 281 of National Railway Adjustment Board, Second Division, and enjoining and restraining them from interferring with the employment of the plaintiffs herein or with their seniority rights or their employment, and to allow them to remain in status quo in regard to their employment with Louisiana & Arkansas Railway Company until such time as they are afforded an opportunity to present their claim to a court of competent jurisdiction or in the alternative and until such time as the award becomes final by a court of competent jurisdiction and an order enforced by a law court vested with jurisdiction of the cause of action; and until such time arrives, that this temporary injunction stay in force and effect, and on final hearing be made permanent, and that the two defendants remain enjoined and prohibited from interferring with the employment of the plaintiffs herein with Louisiana & Arkansas Railway Company under the rules, regulations and contracts now in effect, and until such time as their property rights and seniority rights and liberties are finally adjudged by a court of competent jurisdiction.

Further pray that on final hearing, that the said injunction be perpetuated and made the final judgment of the court, granting the relief above prayed for, and that the said defendants be permanently enjoined from in any wise effecting the status quo of the employment of the plaintiffs herein, until such time as prayed for above.

Further pray for all orders and decrees necessary and proper in the premises and for general and equitable relief.

A. S. Drew
Attorney for Petitioners.

AFFIDAVIT

STATE OF LOUISIANA,
PARISH OF WEBSTER:

BEFORE ME, the undersigned authority personally appeared C. W. McCollum, who states on oath that he is one of the plaintiffs in the above styled action and that the facts and allegations contained in the foregoing petition are true and correct; further states that unless the relief prayed for herein is granted, that he, as well as the other plaintiffs, will suffer irreparable injury.

C. W. MCCOLLUM.

SWORN to and subscribed before me on this the 9 day of January, 1939.

MYRTIS REAVIS,
Notary.

ORDER

Let rule nisi issue herein as prayed for, directed to the defendants through their authorized agents for service, and let each defendant be cited to appear and show cause, if any he has, on the 19th day of January, 1939 at 10:00 o'clock why the temporary injunction should not issue herein as prayed for.

Minden, Louisiana. this 10th day of January, 1939.

J. F. MCINNIS,
Judge.

Filed Jan. 10th, 1939, N. HAYS, *Dy. Clerk District Court.*

A True Copy
Attest: A. E. COLLINSWORTH,
Dy Clerk District Court

(SEAL)

No. 10523.

26th Judicial District Court,

Webster Parish, Louisiana.

C. W. McCollum, et al

versus

Louisiana & Arkansas Railway Company, et al

SUPPLEMENTAL AND AMENDED PETITION

To the Honorable Judge of Twenty-Sixth Judicial District Court Holding Sessions in and for Parish of Webster, State of Louisiana:

The supplemental and amended petition of C. W. McCollum, Joy Pippen, H. H. Pippen, J. R. Smith, J. H. Jones, F. L. Brewster, R. C. Bridges, A. D. Lowe, L. R. Malone, J. H. Johnson, R. R. Goss, Emmit Colvin, E. L. Goss, J. D. Booth, Joe Almond, G. C. Goss, W. J. Colvin, M. A. Liles, R. H. McCollum, all being residents of Webster Parish, Louisiana, and W. C. Alford and A. M. Parker, both being residents of Winnfield, Louisiana, and J. M. Winderweedle and T. H. Guillory, both being residents of Shreveport, Caddo Parish, Louisiana, having first obtained leave of court, with respect represent:

I.

That, since the filing of the original petition herein, your petitioners have been informed and allege same as true, that System Federation No. 59, Railway Employees' Department of American Federation of Labor, acting through its Chairman, Stewart E. Stephens, has addressed a letter to Louisiana & Arkansas Railway Company requesting a conference looking to the carrying out of Award No. 281 of National Railroad Adjustment Board and referred to in the original petition; that petitioners believe and fear that at

the said conference that the award above described will or might be put into effect and might become operative before hearing, which is set for January 19th, 1939, can be had; that, under the circumstances petitioners are entitled to a temporary restraining order directed to both defendants herein, and that they should be temporarily restrained and prohibited from placing said award in effect or from interferring in any wise with the employment of plaintiffs or status quo of plaintiffs in their employment with Louisiana & Arkansas Railway Company pending this hearing which has heretofore been set.

II.

Further show that unless this temporary restraining order is issued that they will suffer irreparable injury and that it is within the power of both defendants to place in effect the award above complained of, and that they are caucusing and conferring on same, and that any action that they might take would vitally effect petitioner and would deprive them of their property without due process of law and without opportunity for hearing and, in fact, nullify the original suit as herein filed and place plaintiffs in position that they would have no adequate remedy at law to adequately compensate them therefor; that as results of said conference if said award is placed in effect by compromise or otherwise that your petitioners herein will be discontinued from service with Louisiana & Arkansas Railway Company, their seniority rights deprived, annuled and destroyed, and that it is necessary and proper in the premises that the temporary restraining order issue as herein prayed for upon plaintiffs given bond in the amount fixed by this Honorable Court.

III.

Further show that this temporary restraining order should issue and restrain and prohibit both defendants, Louisiana & Arkansas Railway Company and System Federation No. 59, Railway Employees' Department of Ameri-

can Federation of Labor from placing in effect the award as above designated, or from doing any act that would in any wise interfere with the employment of the plaintiffs herein with Louisiana & Arkansas Railway Company or any act that might effect their seniority, and, in short, to prohibit and restrain said defendants from doing any acts that would destroy the status quo prior to this award above described.

Wherefore Pray that this amended and supplemental petition be allowed and that the attached affidavits considered, that temporary restraining order issue herein as the law directs upon plaintiffs furnishing bond conditioned as the law requires, directed to Louisiana & Arkansas Railway Company and to System Federation No. 59, Railway Employee's Department of American Federation of Labor, and that they and each of them be temporarily restrained and prohibited from placing into effect Award No. 281 of National Railroad Adjustment Board until such time as a hearing can be had thereon as now pending before this court, and that they stand enjoined, restrained and prohibited from in any wise interferring by compromise, acts, contracts or agreement that will in any wise effect the employment or seniority rights of your plaintiffs herein with Louisiana & Arkansas Railway Company, and to stand so enjoined and restrained until hearing can be had on the temporary injunction heretofore prayed for.

Further pray that this amended petition be allowed filed and that citation and service issue thereon; that all the other allegations of the original petition are herein fully adopted and reiterated as if written herein in full.

Further pray for all orders necessary and proper in the premises, according to the original and supplemental petition, and for judgment accordingly.

Further pray for full and general relief and costs.

A. S. Drew,
Attorney for Petitioners.

AFFIDAVIT

STATE OF LOUISIANA,
Parish of Webster.

BEFORE ME, the undersigned authority, personally came and appeared C. W. McCollum and Joy Pippen, who, after being duly sworn, depose and state:

That they are two of the plaintiffs in the above and foregoing suit and that the facts and allegations in the above and foregoing petition are true and correct and that they know of their own knowledge that System Federation No. 59, Railway Employees' Department of American Federation of Labor has applied by letter to Louisiana & Arkansas Railway Company for a conference looking to the carrying out of Award No. 281 of National Railroad Adjustment Board, and that unless said defendants are temporarily restrained and prohibited from entering into negotiations, that said plaintiffs will suffer irreparable injury thereby and their seniority rights and property rights be divested and taken from them, nullified and rendered useless without any process of law; that the suit heretofore filed will become useless and they have no other means of protection other than the relief herein sought, which will restrain, temporarily, the defendants from going any further in this matter until such time as the injunction suit can be heard.

C. W. McCOLLUM,
JOY PIPPEN.

SWORN to and subscribed before me on this the 11th day of January, 1939.

MYRTIS REAVIS,
Notary

ORDER.

Considering the above and foregoing amended and supplemental petition in light of the original petition and affidavits attached,

It Is Ordered, Adjudged and Decreed that temporary restraining order issue herein directed to Louisiana & Arkansas Railway Company and System Federation No. 59, Railway Employees' Department of American Federation of Labor, and that they and each of them be restrained and prohibited from in any wise compromising settling or adjusting Award No. 281 of the National Railroad Adjustment Board, or in any wise interferring with the employment of plaintiffs herein with Louisiana & Arkansas Railway Company, and to maintain in force and effect the plaintiffs relations with Louisiana & Arkansas Railway Company until such time as a hearing is had on the preliminary writ of injunction herein pending; said temporary restraining order issue upon plaintiffs furnishing bond in the sum of $500.00, conditioned as the law requires; that said restraining order be dated as to the hour, the minute, the day, month and year, as required by law, and be served on the defendants herein and remain in full force and effect until a hearing is had or as provided by law. Let the amended and supplemental petition be filed herein.

Thus done and signed at Minden, Louisiana, at 8:00 o'clock, A. M. on this 12th day of January, 1939.

J. F. McIxxis,
Judge.
26th Judicial District Court.

Filed Jany 12th, 1939, W. C. McKinney, Dy. Clerk District Court.
A True Copy

Attest: A. E. Collinsworth
Dy. Clerk District Court

(Seal)

No. 10523

26th Judicial District Court,

Webster Parish, Louisiana.

C. W. McCollum, et al

versus

Louisiana & Arkansas Railway Company, et al

TEMPORARY RESTRAINING ORDER

To System Federation No. 59, Railway Employees' Department of American Federation of Labor, Stewart E. Stephens, Agent for service, Minden, Webster Parish, Louisiana:

You and your agents and employees are hereby temporarily restrained and prohibited in the name of the State of Louisiana and the Twenty-sixth Judicial District Court for the Parish of Webster, from in any wise compromising, settling or adjusting Award No. 281 of the National Railroad Adjustment Board, or in any wise interfering with the employment of plaintiffs herein with the Louisiana and Arkansas Railway Company, and to maintain in force and effect the plaintiffs' relations with Louisiana & Arkansas Railway Company until such time as a hearing is had on the preliminary of injunction herein pending.

And you are so to remain, enjoined, restrained and prohibited until the further orders of this Honorable Court.

Witness the Honorable J. F. McInnis, Judge of the 26th Judicial District Court at Minden, Louisiana, this January 12th, 1939 at 2:35 o'clock P. M.

W. C. McKinney,
Deputy Clerk District Court.

PERSONAL SERVICE

Received the within Rule to show cause or Temporary injunction and certified copy thereof, together with certified copy of petition Jan. 12th, 1939 and on Jan. 12th, 1939; I served same by handing said certified copies to System Federation No. 59, Railway Employees' Department of American Federation of Labor, Stewart E. Stephens, Agent for service, Minden, Webster Parish, Louisiana the defendant herein named, in person at Minden, La. in Webster Parish, La.

E. NEWBERRY,
Deputy Sheriff.

Filed Jan. 31st, 1939, N. Hays, Dy. Clerk District Court.

A true copy,
Attest:
A. E. COLLINSWORTH,
Dy Clerk District Court.

No. 10523

26th Judicial District Court,

Webster Parish, Louisiana.

C. W. MCCOLLUM, ET AL

versus

LOUISIANA & ARKANSAS RAILWAY COMPANY, ET AL

TEMPORARY RESTRAINING ORDER

To the Louisiana and Arkansas Railway Company, C. P. Couch, Agent for service, Shreveport, Caddo Parish, Louisiana:

You and your agents and employees are hereby temporarily restrained and prohibited in the name of the STATE OF LOUISIANA and the Twenty-sixth Judicial Court for the

Parish of Webster, from in any wise compromising, settling or adjusting Award No. 281 of the National Railroad Adjustment Board, or in any wise interfering with the employment of plaintiffs herein with the Louisiana and Arkansas Railway Company, and to maintain in force and effect the plaintiffs' relations with Louisiana & Arkansas Railway Company until such time as a hearing is had on the preliminary writ of injunction herein pending.

And you are so to remain, enjoined, restrained and prohibited until the further orders of this Honorable Court.

Witness the Honorable J. F. McInnis, Judge of the 26th Judicial District Court at Minden, Louisiana, this January 12th, 1939 at 2:35 o'clock P. M.

W. C. McKINNEY,
Deputy Clerk District Court.

Received the within Restraining Order on the 16th day of Jan. 1939 and on the 16th day of Jan. 1939, I served the same on the within named Louisiana & Arkansas Ry. by handing a certified copy hereof together with certified copy of plaintiffs' petition to C. P. Couch, Agt. for Service, in person in Caddo Parish, La.

E. E. NOWELL,
Deputy Sheriff Caddo Parish, La.

Filed Jan. 17th, 1939, W. C. McKinney, Dy. Clerk District Court.

A true copy,

Attest:
A. E. COLLINSWORTH,
Dy Clerk District Court.

Office - Supreme Court, U. S.
FILED
SEP 25 1941
CHARLES ELMORE CROPLEY
CLERK

26

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 506

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR,

Petitioner,

vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT.

FLOYD D. CULBERTSON, JR.,
Minden, Louisiana,
S. P. JONES,
FRANKLIN JONES,
C. A. BRIAN,
Marshall, Texas,
Counsel for Petitioner.

S. P. JONES,
Of Counsel.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1941

No. 506

SYSTEM FEDERATION NO. 59 OF THE RAILWAY EMPLOYEES DEPARTMENT OF THE AMERICAN FEDERATION OF LABOR,

Petitioner,

vs.

LOUISIANA & ARKANSAS RAILWAY COMPANY.

PETITIONER'S REPLY TO BRIEF OF RESPONDENT.

May It Please the Court:

Respondent's desperate effort to prevent the granting of the writ, by the inclusion of matters extraneous to the present record, and comprising *only a part* of the proceedings in another suit, compels the filing of this brief. We shall endeavor to confine our comments herein to its journeys beyond the record, and the most glaring of its inadvertent misstatements.

Answering A.

In discussing the interrelations of a labor union and its members, the opinion respondent seeks to uphold solemnly says of the present case:

> "We, however, are not concerned with that question here, *for no conflicting rights or claims of members*

and union, are asserted here. The members of the union are not the plaintiff, the union itself is plaintiff, suing, as it states in its petition, as the representative of all of its members, and no claim is made on any hand, nor indeed, none could be, that the union is asking anything inconsistent with the rights of any of its members" (R. 96; 119 F. (2d), 514, 515; italics supplied).

The accusations of internecine strife, the putting over of "a fast one" by a "clique", and like outpourings found on pp. 8-9 of respondent's brief have no relation to reality. It is exquisitely ludicrous to observe the respondent shedding crocodile tears over the fate of *any* of *its* employees.

If the plaintiffs of Cause No. 10,523 in the State court, are to be believed, some were members of a "local craft", and others belonged to no craft or union (see Paragraph XV, Respondent's brief, p. 28). Let us assume they were all members of the petitioner, and their complaints valid; yet, the petitioner would have been authorized to represent the entire craft in the present proceeding. That some members of the craft will suffer by the enforcement of seniority rights is inevitable; but this does not rob the craft representatives of authority to seek the Board's aid in enforcing a labor contract, nor deprive the Board of power to act in the premises. The dispute so created is one between the employer and the craft, cognizable by the Board, whether the craft be considered the principal to the contract, or the agent for the employees, in making it (R. 95-96; 119 F. (2d), 514-515, and cases cited).

The respondent has never, since October 20th, 1937, challenged the right of Petitioner to represent the crafts here involved, and in fact, entered a collective bargaining agreement with it, as such, on that date (see R. 15, Exh. B, ordered up in original R. 72). Had there been the internecine strife within the craft, which respondent invents for

the first time in its brief, ample machinery existed under the Railway Labor Act, as amended June 21, 1934, to have caused an election and certification of the name of the proper representative of the craft by the mediation board (*Virginia Ry. Co.* v. *Sys. Fed. No. 40*, 300 U. S. 515, 546; 81 L. Ed., 789, 799).

Respondent did not seek a decision on this issue, for the simple reason that the amendment indicated ended the day of the "company union," and like stooges. As wisely said in *Estes* v. *Union Term. Co.*, 89 F. (2d), 768, 774:

> "Under the theory and purpose of the statute neither the employees favored, nor those disfavored, by the carrier, have individual legal rights which they can press against the carrier as rights personal to themselves, apart from the collective agreement under which they work. Their rights are those of the class covered by the agreement, arising to the class and to them as members of the class, by virtue of the agreement, and by virtue of it alone."

Careful inspection of the proceedings in Cause No. 10,523 in the State court, will disclose the old and familiar effort to govern the relations of employer and employee by injunction (respondent's brief, 36-37). While the fine Italian hand of the respondent may not necessarily be discerned in them, of a certainty they relieved it of making any real effort to adjust the present labor dispute.

We regret that respondent has seen fit to present matters from without the record in this Court. Had a fair presentation of the same been made, we would have ignored its conduct. In attacking the jurisdiction of the Board, however, respondent suggests that this being a dispute between employees, only the courts can settle it, "where all parties are before the court" (its brief, 9). It conveniently failed to inform this Court that the end result of the proceedings in State court Cause No. 10,523 was a judg-

ment, confirming an agreement in open court, for all employees there complaining to dismiss such cause and intervene in the present one, so soon as it should be placed at issue. Hence, all parties will be before the Court when the present case is placed at issue. For the purpose of showing this alone, we follow the respondent out of the record, and attach as our Appendix A, the motion, judgment and restraining order which comprises the last proceedings in said State court cause.

Answering B.

Respondent can cite no case for its proposition (p. 12, its brief) that a cause of action for breach of contract, which has accrued during its term, expires at the end thereof. No court of any civilized land has heretofore denied the recovery of damages for breach of a contract, which occurred during the term of the agreement, simply because suit was instituted *after* a questionable cancellation thereof by only *one* of the contracting parties. Patently, neither the posted rules of February 9, 1931, nor the pact of October 20, 1937, were retroactive, or purported to affect previously existing employer-employee relations or rights to damages which had theretofore accrued (R. 15). As well remarked by a Texas court, in speaking of the effect of a subsequent written contract on an earlier oral one, made between the same parties:

> "If the written contract changed the contract originally made between the parties, such change would not affect plaintiff's right to recover damages sustained by him by reason of defendant's breach of the original contract which accrued prior to the execution of the written contract, unless such contract *by express terms or necessary implication* showed that the parties intended it to limit plaintiff's right to recover damages already sustained for breach of the original as well as damages that might be thereafter sustained

by defendant's breach of the written contract. Railway Co. *v.* Harris, 110 S. W. 145; Cattle Co. *v.* Balfour, 146 S. W. 674; Simpkens on Contracts (1010 Ed.), par. 3." (Italics supplied. *Granger* v. *Kishi*, 153 S. W. 1161, 1163. Also see *13 C. J.*, 660 and 598.)

Examination of the fourth from last paragraph of the opinion, heavily relied upon by respondent (its brief, p. 12), shows that it does not challenge the employees' right of action for breach of either the 1929 contract or the 1931 rules (R. 97, 119 F. (2d) 515). True, it says the "right to work" under the contract ended with its term; whereupon, the employees held rights to work under subsequent rules. It does not say that the right to damages for breach of the contract or rule ended with the term of each; nor could it, without running counter to the decision of this Court in *Spalding* v. *Mason*, 161 U. S. 375 at 396, which pointedly remarks that:

> " 'It is a dictate of natural justice, and the law of every civilized country, that a man is bound in equity, not only to perform his engagements, but also to repair all the damages that accrue naturally from their breach * * *.' "

The sole support of the opinion in this respect is the bland assertion that no claim has been or is being made for damages for breach of the contract. That this is wholly untrue is easily discernible from reading the complaint (particularly R. 18 and para. b, R. 27). By actual count, some 58 of the some 81 employees, or, roughly, 71% of those complaining, were alleged to have been cut off in violation of the 1929 contract and prior to February 9th, 1931 (R. 7-10). Not only does the complaint contain specific counts charging violation of the 1929 contract, occasioning loss of time and money to the employees wronged (R. 18), but it prays for an accounting of all sums due to

each of the employees named therein, and for general relief (R. 27).

Answering C.

Respondent's contention that there was no breach of the 1929 contract alleged, through failure to seek re-employment under the "ten day rule", ignores the direct charge that the men were wrongfully laid off, or taken out of service in violation of the contract in the first instance (See Para. IV-A, R. 10). Further, it ignores the specific allegations that the living employees: "* * * are now, and have been since their respective furloughs able and willing to perform for the defendant services of their various crafts as the same might be required of them by the defendant" (Para. XII, R. 24); that "* * * various of the employees named in Paragraph IV hereof, after their respective furloughs, and after they had been replaced by new employees from time to time, requested the defendant to reinstate them to service according to the seniority rights under the Agreement of August 1, 1929, confirmed or carried forward in the purported rules of February 9, 1931, which requests were uniformly refused" (Para. IX, R. 20).

Alternative counts in the complaint charged, that whether the August 1st, 1929 contract, or February 9, 1931 rules were effective at the "time the workers described herein were held out of employment", that "in either or both of said events, plaintiff has a contractual right of action against defendant as alleged herein, by reason of the loss of time and money wrongfully occasioned plaintiffs by the breach of said contractual relations arising out of the infraction of rules 8, 9 and 12, or what is commonly called their seniority rights" (R. 18).

We confess to the "redundancies, prolixities and inconsistencies" found in our complaint by the Circuit Court and respondent. Yet, the poor literary style of their law-

yers should not serve to deny to petitioners their day in court on a meritorious claim. Particularly so, where under existing rules, to quote *Moore's Federal Practice,* Vol. 1, page 440, "a generalized summary of the case that affords fair notice is all that can be expected." (See also *4 Fed. Rules Serv.,* 891; *Sec. & Exch. Comm.* v. *Timetrust Inc.,* 28 Fed. Supp. 34, 41; *Van Dyke* v. *Broadhurst,* 28 Fed. Supp. 737; *MacLeod* v. *Cohen-Erichs Corp.,* 28 Fed. Supp. 103; *Young* v. *Aetna Life Ins. Co.,* 32 Fed. Supp. 389). At worst, petitioner should have been ordered to replead, and not been thrown bodily out of court, because of prolixities (*Catanzaritti* v. *Bianco,* 25 Fed. Supp. 457).

Again, Respondent's efforts to limit some of petitioner's allegations in one count, by contrary charges in the same or another count (its brief, pp. 6 and 4, 13), are met full in the face by the procedural rule which in part reads:

> "A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or in separate counts or defenses. When two or more statements are made in the alternative and one of them if made independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both." (Rule 8 (e), 28 U. S. C. A., foll. Sec. 723C p. 402, and see *Kraus* v. *Gen. Mot. Corp.,* 27 Fed. Supp., 537, 540).

Answering D.

The allegation that petitioner endeavored to settle the "dispute as to the interpretation of the agreement of August 1, 1939, by conference duly held with the proper officers of said defendant in due order and in the manner provided by the Railway Labor Act as amended" (R. 22), was sufficiently broad as a basis for proving all contentions

pertaining to such dispute, including the effect of the 1931 rules on the rights of the employees, and on the 1929 agreement. Considering the award of the Board, which was attached to the petition, it will be seen that the Respondent anticipated that the claim was based on the 1931 rules, and brought forward its contentions thereunder (See Sec. 10, Carrier's Statement of Facts, R. 34).

Remembering that the Board's jurisdiction is invoked through the simple filing of a petition, with facts and supporting data (45 U. S. C. A., Sec. 153, first (i)), it appears to be highly inconsequential, whether Petitioner or Respondent furnished the data as to the 1931 rules, and their effect on the particular dispute. After its request for the Board to consider the 1931 rules in determining the entire dispute, Respondent's contention it had no jurisdiction to act thereon, comes in ill grace.

Conclusion.

We make no specific answer to subdivisions E through H of Respondent's brief, for the reason that the foregoing discussion under subdivision A through D fully answers all of the conditions later brought forward. We respectfully submit that petitioner is entitled to the relief sought by the petition for Writ of Certiorari and supporting brief now on file.

Respectfully submitted,

FLOYD D. CULBERTSON, JR.,
Minden, Louisiana,

S. P. JONES,
FRANKLIN JONES,
C. A. BRIAN,
Marshall, Texas,

By S. P. JONES,
Of Counsel,
Attorneys for Petitioner.

APPENDIX A.

26TH JUDICIAL DISTRICT COURT, WEBSTER PARISH, LOUISIANA.

No. 10,523.

C. W. McCollum, et al., Plaintiffs,

vs.

Louisiana & Arkansas Railway Company, et al., Defendants.

Motion.

Now into Court comes System Federation Number 59 of the Railway Employees Department of the American Federation of Labor, made defendant herein, appearing herein solely for the purpose of this motion, and shows to the court that the petition filed by plaintiffs should be dismissed and the order for temporary restraining order heretofore issued should be vacated, for the following reasons, towit:

I.

That on March 22, 1939, a complaint was filed in the United States District Court for the Western District of Louisiana entitled System Federation Number 59 of the Railway Employees Department of the American Federation of Labor *v.* Louisiana & Arkansas Railway Company, which cause bears Civil Action Docket #75 of said court, which action was filed pursuant to the provisions of the Act of Congress of May 20, 1926, as amended June 21, 1934, U. S. Code, Title 45, Chapter 8, 44th. Stat. 577; 48 Stat. 926; 48 Stat. 1185, commonly called the Railway Labor Act.

That such complaint has for its object the enforcing, in all of its phases, Award Number 281 of the National Railroad Adjustment Board, heretofore obtained by the mover herein against the said Railway Company.

That because of the filing of such action and its objects petitioners suit for injunction herein would be futile and powerless.

That petitioner has the remedy of intervening in the said suit filed in Federal Court and of presenting his complaint for adjudication therein.

II.

That on the 23rd day of February, 1939, at a conference between counsel for your mover and Hon. A. S. Drew, counsel for petitioners herein, the following agreement relative to the dismissal of this suit was reached:

(a) A stipulation by counsel for petitioners and for both defendants was to be prepared and filed continuing in full force and effect the temporary restraining order, theretofore made returnable on February 24th, 1939, until March 30, 1939 without the necessity of petitioners renewing same at ten day intervals, as provided by law.

(b) That the filing of a petition by your movers in the United States District Court aimed at the judicial enforcement of the said Award No. 281 of the National Railroad Adjustment Board within the period between February 24, 1939 and March 30, 1939, would not constitute a violation of the restrictions placed upon your movers by the restraining order.

(c) That immediately upon the filing of said petition by your mover in the said United States District Court the said Mr. A. S. Drew would thereupon dismiss his suit for injunction herein and that the temporary restraining order was to be vacated. Mr. Drew giving as his reasons that he would then have an opportunity to intervene in the United States Court and have his complaint passed upon.

That such stipulation was filed as set forth in (a) above, and your mover did, on March 22, 1939, file in the United States District Court its action as set forth in paragraph 1 herein; and that this suit for injunction has not been dismissed as promised by Mr. Drew, although ample time has been given for such dismissal.

Your Mover Therefore Prays that this suit for injunction be dismissed at Plaintiff's costs and that the tempo-

rary restraining order heretofore issued herein be vacated.

And for all general and equitable relief, etc.

FLOYD D. CULBERTSON, JR.,
Attorney for Mover.

STATE OF LOUISIANA
Parish of Webster:

Before me, the undersigned authority, personally appeared Floyd D. Culbertson, Jr., who, after being by me duly sworn, deposed and said:

That he is attorney for System Federation Number 59 of the Railway Employees Department of American Federation of Labor, mover herein, and that he has read the foregoing motion and that all the facts and allegations contained therein are true and correct to the best of his knowledge and belief.

FLOYD D. CULBERTSON, JR.

Sworn to and subscribed before me this the 5th day of June, 1939.

JOHN T. CAMPBELL,
Notary Public.

Endorsed: Filed June 5th, 1939.

26TH JUDICIAL DISTRICT COURT, WEBSTER PARISH, LOUISIANA.

No. 10,523.

C. W. McCOLLUM et al.,

vs.

LOUISIANA AND ARKANSAS RAILWAY COMPANY et al.

Judgment.

The motion to dismiss this proceeding was called to trial and submitted. After the trial of the motion, counsel for the Plaintiff and Defendants entered into the following Agreement; Counsel for defendants agreed that a Preliminary Writ of Injunction be issued in this case upon

plaintiffs furnishing bond in the sum of $100.00 conditioned as the law directs with the understanding that when the suit in the United States District Court for the Western District of Louisiana is put at issue for trial on the merits that then the plaintiffs in this cause #10523 will immediately intervene in the suit in the United States District Court wherein System Federation #59 Railway Employees Department of American Federation of Labor and certain individuals are plaintiffs and the Louisiana & Arkansas Railway Company are defendant and will dismiss this suit #10523.

With this understanding and ageement it is ordered that a preliminary writ of injunction issue in this cause upon the plaintiffs furnishing bond in the sum of $100.00 conditioned as the law directs. The preliminary injunction to remain in force subject to trial on the merits unless dismissed as above provided.

Judgment rendered, read and filed and signed at Minden, Louisiana, in open court on this the 7th day of June, 1939.

J. F. McInnis,
Judge.

Endorsed: Filed June 6, 1939.

26TH JUDICIAL DISTRICT COURT, WEBSTER PARISH, LOUISIANA.

No. 10,523.

Temporary Injunction.

C. W. McCollum et al.

versus

Louisiana & Arkansas Railway Company et al.

The State of Louisiana, to the System Federation No. 29, Railway Employees Department of American Federation of Labor; S. E. Stephens, Chairman, of Webster Parish, Louisiana:

You are hereby temporarily enjoined, restrained and prohibited in the name of the State of Louisiana, and of the

twenty-sixty Judicial District Court for the Parish of Webster, from in any wise compromising, settling or adjusting Award No. 281 of the National Railroad Adjustment Board, or in any wise interfering with the employment of plaintiffs in this suit, with Louisiana & Arkansas Railway Company, and to maintain in force and effect the plaintiffs' relations with the Louisiana & Arkansas Railway Company.

And you are so to remain temporarily enjoined, restrained and prohibited until the further orders of this Honorable Court.

Witness the Honorable J. F. McInnis, Judge of our said Court at Minden, Louisiana, this June 8, 1939.

W. C. McKINNEY,
Dy. Clerk, D. C.

The above Writ of Injunction was served on System Federation No. 59, through S. E. Stephens, Chairman, on June 10, 1939, by P. M. Hough, Dy. Sheriff, Webster Parish, La. Endorsed: Filed, June 12, 1939.

The above writ was served on Louisiana & Arkansas Railway Company through C. P. Couch, President, on June 12, 1939, by R. C. Picking, Dy. Sheriff, Caddo Parish, La. Endorsed: Filed, June 13, 1939.

Bond, in the amount of $100.00 with plaintiffs as principal and R. H. Miller, as Surety, dated June 7, 1939, conditioned upon the temporary writ of injunction being rightfully obtained, filed June 8, 1939.